

ORIGINAL

REPORTER'S RECORD

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VOLUME 49 OF 51

TRIAL COURT CAUSE NO. 241-0978-04

THE STATE OF TEXAS \* IN THE DISTRICT COURT  
VERSUS \* SMITH COUNTY, TEXAS  
TRACY BEATTY \* 241ST JUDICIAL DISTRICT

PUNISHMENT PHASE

AUGUST 10, 2004

FILED IN  
COURT OF CRIMINAL APPEALS

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On the 10th day of August, 2004, the following  
proceedings came on to be heard in the above-entitled and  
numbered cause before the HONORABLE JACK SKEEN, JR., Judge  
Presiding, held in Tyler, Smith County, Texas:

Proceedings reported by computerized stenotype machine;  
Reporter's record produced by computer-assisted  
transcription.

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241ST JUDICIAL DISTRICT COURT  
SMITH COUNTY, TEXAS

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REPORTER'S NOTE

Uh-huh = Yes - Affirmative response

Huh-uh = No - Negative response

Quotation marks are used for clarity and do not necessarily  
indicate a direct quote.

## I N D E X

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(PUNISHMENT PHASE)

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P R O C E E D I N G S

(August 10, 2004)

(Open court, defendant present, no jury.)

THE COURT: Back on the record in Cause Number 241-0978-04, the State of Texas versus Tracy Beatty. The State is present; defense counsel are present; the defendant is present.

The Court has before it a proposed charge of the Court to give to the jury.

The jury, of course, is not in the courtroom.

And at this time, has the State had an opportunity to review the proposed charge which has been submitted to the Court to read to the jury on sentencing?

MR. BINGHAM: Judge, we have.

THE COURT: Does the State have any objections to the charge as prepared for the Court to read to the jury?

MR. BINGHAM: We do not.

THE COURT: Mr. Perkins -- or Mr. Hawk, in regard to the proposed charge of the Court to be read to the jury -- well, the Court has several written objections from the Defense and also a request for an instruction from the Defense.

Do you want to go on through those?

MR. HAWK: I will, Judge.

1 First of all, I'm making a presumption here.  
2 I think the Court might have said this earlier -- I'm not  
3 sure of that -- even though the Defense has not yet rested  
4 before the jury, we anticipate that happening when we come  
5 back. So I would make the presumption that our objections  
6 in this charge conference would be the same were we to bring  
7 the jury in, rest, and we send them right back out.

8 Is that an appropriate presumption?

9 THE COURT: That is -- you have accurately  
10 described the situation. The Court being aware as what I  
11 know right now is about to take place. If the Court brings  
12 the jury in, and then that takes place, I would just send  
13 the jury right back out after about 30 seconds. And then we  
14 would go through this charging conference.

15 So you have accurately described what the  
16 Court plans to do is complete the charging conference, allow  
17 you to make your objections on the record and through your  
18 written motions that the Court will rule on. And then at  
19 that point, once we have the charge in final form and the  
20 Court knows how much the State and Defense are requesting  
21 for argument, then the Court will bring the jury in.

22 And if there is not some change in what the  
23 Court anticipates will take place, then the case would be  
24 argued and submitted to the jury. So you've accurately  
25 stated that.

1 MR. HAWK: Well, in that case, then here's  
2 what we'll do. If I can go through this, I'll try to do  
3 this fairly sequentially.

4 We are going to at this time, prior to the  
5 time that the charge is read to the jury, reurge the motions  
6 that were filed pretrial that the Court preclude the  
7 prosecution receiving the death penalty, that the Court  
8 declare the capital sentencing scheme unconstitutional and  
9 preclude the death penalty on that basis, and for the Court  
10 to hold 37.071 unconstitutional.

11 Those three motions were filed back in April  
12 13th and ruled by the Court -- or were submitted for its  
13 ruling on June the 18th. I believe the Court has already  
14 stated in the record that you've denied those motions, but  
15 we have to reurge those three specific motions at this time.

16 THE COURT: That's right. The Court has  
17 earlier denied those motions, and the Court will again deny  
18 those motions that you just enumerated for the record at  
19 this time.

20 MR. HAWK: We also would reurge all of our  
21 objections that we made at the guilt/innocence phase of  
22 trial to the evidence anytime it was offered. We want to  
23 renew those objections at this time prior to the time the  
24 charge is read to the jury.

25 THE COURT: And the Court's rulings on your

1 objections made during the trial and the Court -- those  
2 rulings of the Court will stand.

3 MR. HAWK: Thank you, Judge.

4 Now, we have prepared various writings. I'll  
5 start with the short, fast one.

6 We have submitted a proposed request for a  
7 jury instruction that the burden of proof be submitted to  
8 the jury to be proved beyond all doubt, especially with the  
9 presumption -- excuse me -- especially with the Special  
10 Issue Number 1. It's also cited in there in our written  
11 request.

12 Here's where we've got it. In an indictment  
13 in the case, Judge, the indictment makes specific, factual  
14 allegations that the defendant did do this, the defendant  
15 did do that, the defendant then and there do this. And  
16 they're not qualified like the defendant probably caused the  
17 death of or the defendant probably engaged in certain  
18 conduct.

19 It is a definitive statement that then the  
20 State must prove beyond a reasonable doubt. The challenge  
21 we face in a capital sentencing scheme is, is that the  
22 Special Issue Number 1 is whether there's a probability that  
23 the defendant would commit criminal acts of violence. But  
24 then the State is only required to prove a probability  
25 beyond a reasonable doubt, which, in essence, is a

1 qualification on an existing qualification.

2 What we're going to ask the Court to do is  
3 instruct the jury that they must be absolutely certain,  
4 prove beyond all doubt, that there's a probability that the  
5 defendant will commit criminal acts of violence. We have  
6 given that instruction to the Court in writing, in  
7 paragraphs -- I guess, cumulative I through VIII.

8 THE COURT: 1 through 8 or 1 through 7?

9 MR. HAWK: I said 8; there's only 7; you're  
10 right.

11 THE COURT: Okay.

12 MR. HAWK: 6 and 7 are the applications. So  
13 we make that written request prior to the time that the  
14 charge is read to the jury on that one.

15 THE COURT: Do you want me to go ahead and  
16 rule on that one?

17 MR. HAWK: If you would, Judge.

18 THE COURT: That request for the jury  
19 instruction of prove beyond all doubt is denied.

20 MR. HAWK: Okay. Second, Judge, we're  
21 requesting a specific instruction to the jury regarding  
22 residual doubt as mitigation. Traditionally, this has been  
23 left for argument to the parties as to whether residual  
24 doubt from the guilt/innocence phase of a trial does rise to  
25 the level of mitigating circumstance. That's left for the



1 parties to argue. What we're asking now is beyond that  
2 specific instruction as laid out in our request.

3 THE COURT: I've got it. I was reading it.  
4 I was reading the proposed requested instruction.

5 All right. The requested instruction to the  
6 jury regarding residual doubt as mitigation is denied.

7 MR. HAWK: Then, Judge, we have something  
8 entitled "Defendant's Objections to the Court's Charge at  
9 the Punishment Phase of Trial." These are a series of Roman  
10 Numeral paragraphs. This I can say is I through VIII.

11 THE COURT: Do you want go on through those?

12 MR. HAWK: Yes, I can go through these  
13 briefly, Judge.

14 These we submit to you and ask for rulings by  
15 submission. Paragraph I basically deals with the myth of  
16 the capital mistrial. The Court never in its charge tells  
17 the jury that the failure of them to agree unanimously on  
18 either special issue results in a life sentence. You just  
19 never tell them that in the charge, and we object to it.  
20 That's in paragraph I.

21 We're asking for specific relief on that,  
22 that they be so informed. As it stands now, they're left  
23 with they can't answer that question, but they're never told  
24 what will happen if the question is not answered.

25 THE COURT: That's number I?

1 MR. HAWK: Well, that's Roman Numeral I in my  
2 objections. Failure to inform the consequences of inability  
3 to agree.

4 MR. PERKINS: We're looking at a different  
5 document, Judge.

6 THE COURT: I'm sorry, Mr. Hawk. That's why  
7 I was asking you if that was one.

8 "Defendant's Objections to Court's Charge at  
9 Punishment Phase of the Trial," Roman Numeral Number I is  
10 failure to inform of consequences of inability to agree.  
11 I'm with you now. Go ahead.

12 MR. HAWK: Right. And paragraphs I and II  
13 deal with that specific realm of objection that we would  
14 like to have in the Court's charge, some type of instruction  
15 that would clear up this myth for the jury so that the truth  
16 be told, they will understand the effect of a nonunanimous  
17 verdict.

18 Paragraph III and IV deal with instructions  
19 and our objection to any instruction on an issue which is  
20 not in the indictment. Obviously, in traditional punishment  
21 terms, the juries are required to assess punishment based  
22 upon the allegations in the original indictment, but the  
23 Texas capital sentencing scheme adds additional issues which  
24 are not presented in the indictment, first, on future danger  
25 and then on mitigation not originally charged in the

1 indictment. We object, therefore, to that.

2 Also, we object to the failure of the Court's  
3 charge placed upon the mitigation issue on the State, we  
4 believe that, which is where it ought to be in any criminal  
5 trial on every material issue.

6 Paragraph Number VI, we object to the Court's  
7 instructions as to the personal, moral culpability of the  
8 defendant as a consideration. And there is a good  
9 recitation of the concept of what mitigation should be and  
10 what it ought to be. And we disagree with the Court's  
11 instruction on what that is, although we recognize it's the  
12 state of the law.

13 Paragraph VII, the instruction that either  
14 circumstance or circumstances, our opinion is that should  
15 simply read "whether there is a sufficient mitigating  
16 circumstance." There shouldn't be "or circumstances" in  
17 there.

18 Also, we say that the definition as provided  
19 by the Court of mitigation as evidence that a juror might  
20 regard as reducing the defendant's moral blameworthiness is  
21 unfairly limiting what a juror specifically can consider as  
22 mitigation because they may think that there is something  
23 which means the defendant should get a life sentence rather  
24 than death, but it doesn't necessarily reduce the  
25 defendant's moral blameworthiness. We say that's mitigation

1 and should be considered under the charge, and we object to  
2 that.

3 These are our objections -- I should say  
4 global objections in that document.

5 THE COURT: Mr. Bingham?

6 MR. BINGHAM: Judge, we would object to what  
7 the defendant to -- to what the defendant has proposed in  
8 the record to the Court.

9 THE COURT: I'm sorry. I couldn't hear you.

10 MR. BINGHAM: We object.

11 THE COURT: Then in regard to the defendant's  
12 objections to Court's charge at punishment phase of trial  
13 and the objections contained therein under Roman Numerals  
14 I through VIII as set out by Mr. Hawk in his argument to the  
15 Court, that is overruled and denied.

16 MR. HAWK: Additionally, to give some kind  
17 of -- I haven't said this in a few days -- flavor and  
18 context to that specific request to some of the defendant's  
19 objections, especially with regard to the myth of the  
20 capital mistrial, we are going to request that the Judge  
21 give the following specific instructions for the following  
22 specific verdict form for the jury.

23 It reads as follows: "We, the jury, are  
24 unable to answer Special Issue Number 1," and then a line  
25 for the Foreman. Or "We, the jury, are unable to answer

1 Special Issue Number 2." I should say "and." I want both  
2 of those lines on there and both of those sentences on  
3 there.

4 We're going to request that to give some kind  
5 of vehicle for the jury to currently -- give some kind of  
6 context to their inability to decide, which will also help  
7 us show another day that there was error in the charge on  
8 not giving the instructions on what a nonunanimous verdict  
9 means in the first place.

10 THE COURT: Which one is that in, Mr. Hawk?

11 MR. HAWK: That's not in any one. That was  
12 just fresh off the thought process, Judge.

13 THE COURT: So you need a ruling on that one?

14 MR. HAWK: Yes, Judge.

15 THE COURT: That's denied.

16 MR. HAWK: Okay. The final document is on  
17 the defendant's objections to the Court's charge at  
18 punishment. That's the long one; it's got about 54  
19 different reasons why we object to it. I will be candid  
20 with the Court when I tell you that the state of the law is  
21 contrary to these specific objections. I don't want to say  
22 they're cumulative, because they're not. They just have  
23 specific differences in them, but as a general proposition,  
24 these objections have been stated both in our pretrial  
25 motions on the constitutionality of the statute, as well as

1 the other filed documents, as well as in our request for  
2 special voir dire of the jury and things of that nature.

3 I'll see if there's some special ones that I  
4 can give some argument for apart from the submission that  
5 I've supplied to the Court.

6 THE COURT: Mr. Bingham, have you reviewed  
7 the defendant's objections to the charge on punishment, the  
8 document Mr. Hawk is going over?

9 MR. BINGHAM: I've reviewed it.

10 THE COURT: I'm going -- just want to make  
11 sure you had. That's okay. I'm going to ask you later what  
12 your position is.

13 MR. BINGHAM: Yes, sir.

14 THE COURT: I just wanted to make sure you  
15 had reviewed it since it has 54 subsections, so to speak.

16 MR. BINGHAM: We received it this morning and  
17 had an opportunity to review it.

18 MR. HAWK: Yeah, it now becoming ripe, Judge,  
19 we wanted to present this this morning. We would submit  
20 this document entitled "Defendant's Objections to the Charge  
21 at Punishment," and we would offer this for ruling by  
22 submission, Judge. There's no additional argument, other  
23 than that contained in the instrument.

24 THE COURT: All right. Thank you, Mr. Hawk.

25 MR. HAWK: There's an order attached to it.

1 All we ask is that there be a ruling prior to the time the  
2 charge is read to the jury.

3 THE COURT: What's your position,  
4 Mr. Bingham, on this Defendant's objections to the Court's  
5 charge?

6 MR. BINGHAM: Judge, we believe what's  
7 contained in the Defendant's objections to the charge at  
8 punishment is not the current status of the law; that to  
9 give any of these instructions to the jury at the punishment  
10 stage would be contrary to the existing status of the law.  
11 We would object to these and ask the Court to deny the  
12 defendant's motion or his request in total.

13 THE COURT: All right. Then the Court,  
14 having reviewed the defendant's objections to the charge at  
15 punishment, being the motion which includes 54 enumerated  
16 items, that is overruled and denied.

17 The Court is signing the order provided by  
18 Mr. Hawk at this time, overruling and denying the  
19 defendant's objections to the charge at punishment, being  
20 the objections, the 54 listed in that motion, also the  
21 defendant's objections to the Court's charge at the  
22 punishment phase of trial, which was the defendant's  
23 objections in the written motion.

24 Mr. Hawk, do you just need one order signed,  
25 Mr. Hawk? Mr. Hawk, I think I just have one order up here.

1 Do you just need one order signed?

2 MR. HAWK: I think I just attached one to  
3 that long one. I think you just gave oral rulings on the  
4 rest of them. What I'll do, Judge, is I'll provide orders  
5 on the rest of them. For some reason, the order didn't make  
6 it to you.

7 THE COURT: Well, the Court's rulings have  
8 been entered on the record prior to -- obviously, prior to  
9 the submission of the charge to the jury. I have signed the  
10 one order that was behind the 54-item motion, which was  
11 overruled and denied. And the Court has overruled and  
12 denied the other motions and requested instructions. If you  
13 want me to, I'll sign an order on each of those.

14 MR. HAWK: If there were objections, they  
15 were overruled; and if they were a motion, it was denied?

16 THE COURT: Correct. The motions are denied.  
17 Any objections are overruled.

18 MR. HAWK: I think that record is clear.

19 If I could be excused for a moment. The  
20 Court's staff had a question of me.

21 THE COURT: Yes, sir.

22 Still being on the record, obviously, the  
23 jury not yet having been in the courtroom, outside the  
24 presence of the jury in Cause 241-0978-04, how much time to  
25 argue at sentencing does the State request?



1 MR. BINGHAM: One hour, Judge.

2 THE COURT: Mr. Perkins, on behalf of the  
3 defendant?

4 MR. PERKINS: That should be ample time, Your  
5 Honor.

6 THE COURT: All right. One hour, then, will  
7 be allotted by the Court per side.

8 Who will open, Mr. Bingham?

9 MR. BINGHAM: Ms. Sikes will, Judge.

10 THE COURT: Do you need a warning,  
11 Mrs. Sikes, in terms of argument?

12 MS. SIKES: I probably need several, Judge.  
13 In terms of argument, if I could have a warning after  
14 30 minutes.

15 THE COURT: All right. Thank you.

16 Do you need a warning, Mr. Perkins?

17 MR. PERKINS: (Shakes head negatively.)

18 THE COURT: I didn't think so.

19 The Court will keep track of the time, and if  
20 you push up on that hour, the Court will let you know when  
21 you've got about five minutes to go in case that develops.  
22 So you will have some type indication when you're up close.

23 MR. PERKINS: Thank you, Judge.

24 THE COURT: Mr. Bingham, I take it you will  
25 be doing the second half?

1 MR. BINGHAM: I'll be doing the closing.

2 THE COURT: You need some warning up towards  
3 the end of your 30?

4 MR. BINGHAM: When I have five minutes  
5 remaining, Judge, if I get that far.

6 THE COURT: Are we ready for the jury?  
7 Anything further before we bring the jury in?

8 THE BAILIFF: All rise for the jury.

9 (The jury enters the courtroom.)

10 (Open court, defendant and jury present.)

11 THE COURT: Be seated, please. Thank you.

12 Mr. Perkins, the State having rested, what  
13 says the Defense?

14 MR. PERKINS: Your Honor, Ladies and  
15 Gentlemen of the Jury, the Defense rests as well.

16 THE COURT: Thank you, Mr. Perkins.

17 MR. BINGHAM: Your Honor, the State would  
18 close.

19 MR. PERKINS: And the Defense closes as well.

20 THE COURT: Thank you, Mr. Perkins.

21 Ladies and Gentlemen, all of the evidence in  
22 this case at the sentencing phase is now concluded. Both  
23 sides having rested and closed, the Court is going to now  
24 read to you the charge of the Court, which has all of the  
25 law contained in it that will govern and guide you and that

1 you will follow and the law that you will apply in deciding  
2 the issues at the sentencing phase of this trial.

3           Once the Court finishes reading the charge of  
4 the Court to you, which contains all the law that you will  
5 need and all the instructions you will need, each side in  
6 the case, as you saw before, will have an opportunity to  
7 argue the sentencing phase of the trial.

8           The State will proceed first. Ms. Sikes will  
9 give the opening argument on behalf of the State, Mr.  
10 Perkins will give the argument on behalf of the defendant,  
11 and then Mr. Bingham will give the closing argument on  
12 behalf of the State.

13           At the end of the arguments, the case will be  
14 submitted to you. As you already know, the Court's charge  
15 will be taken into the jury room by you. In the event there  
16 is any evidence during your deliberations that you need that  
17 was introduced anywhere in the trial, then you would be able  
18 to simply communicate that to Carleton, and he would  
19 communicate it to me, and the Court will have it sent to  
20 you.

21           So at this time, the Court will read the  
22 charge of the Court to you.

23           "Cause Number 241-0978-04, the State of Texas  
24 versus Tracy Beatty: Ladies and Gentlemen of the Jury, by  
25 your verdict returned in this case, you have found the

1 defendant, Tracy Beatty, guilty of the offense of capital  
2 murder, which was alleged to have been committed on or about  
3 the 25th day of November, 2003, in Smith County, Texas.

4 "It is necessary now for you to determine  
5 from all of the evidence in the case the answers to certain  
6 questions called special issues in this charge. The Court  
7 instructs you further, however, as follows: The mandatory  
8 punishment for capital murder is death or confinement in the  
9 Institutional Division of the Texas Department Of Criminal  
10 Justice for life.

11 "In deliberating on Special Issue Number 1  
12 and Special Issue Number 2, submitted in this charge, the  
13 jury shall consider all evidence admitted at the guilt or  
14 innocence stage and the punishment stage of this trial,  
15 including evidence of the defendant's background or  
16 character or the circumstances of the offense that militates  
17 for or mitigates against the imposition of the death  
18 penalty.

19 "The burden of proof in answering Special  
20 Issue Number 1 still rests upon the State and never shifts  
21 to the defendant. Special Issue Number 1 must be proven by  
22 the State beyond a reasonable doubt. Therefore, before  
23 Special Issue Number 1 may be answered yes, all jurors must  
24 be convinced by the evidence beyond a reasonable doubt that  
25 the answer to such special issue should be yes.

1 "If the jury unanimously determines and only  
2 if such determination is unanimous that the State has proved  
3 Special Issue Number 1 beyond a reasonable doubt, that is,  
4 the State has proved beyond a reasonable doubt that there is  
5 a probability that the defendant, Tracy Beatty, would commit  
6 criminal acts of violence that would constitute a continuing  
7 threat to society, then the jury foreman will so record the  
8 jury's answer of yes to Special Issue Number 1 by signing  
9 his or her name to the finding reflecting such answer on the  
10 form provided for that purpose.

11 "You are further instructed that if any  
12 juror, after considering the evidence and these  
13 instructions, has a reasonable doubt as to whether the  
14 answer to Special Issue Number 1 should be answered yes,  
15 then such juror should vote no to Special Issue Number 1 in  
16 the jury's deliberations.

17 "If 10 jurors or more vote no to Special  
18 Issue Number 1, then the answer of the jury shall be no to  
19 that issue, and the jury foreman will so record the jury's  
20 answer of no by signing his or her name to the finding  
21 reflecting such answer on the form for that purpose.

22 "If in answering Special Issue Number 1, the  
23 vote of the jurors is not unanimously yes or not at least 10  
24 in favor of an answer of no, then there shall be no answer  
25 for that special issue, and the jury foreman shall not sign

1 his or her name to that answer form for that Special Issue  
2 Number 1.

3 "Members of the jury need not agree on what  
4 particular evidence supports a negative answer to Special  
5 Issue Number 1. The burden of proof in answering Special  
6 Issue Number 1 rests upon the State throughout the trial and  
7 never shifts to the defendant.

8 "The fact that a person has been arrested,  
9 confined, or indicted for or otherwise charged with the  
10 offense gives rise to no inference at his trial. With  
11 respect to any and all issues in this trial, the law does  
12 not require a defendant to produce any evidence at all, and  
13 the defendant has no burden of proof as to any issue in the  
14 trial of this case.

15 "It is not required that the prosecution  
16 prove an affirmative answer to Special Issue Number 1 beyond  
17 all possible doubt. It is required that the prosecution's  
18 proof excludes all reasonable doubt concerning an  
19 affirmative answer to Special Issue Number 1.

20 "You are further instructed that if the jury  
21 unanimously returns an affirmative finding to both Special  
22 Issue Number 1, the jury shall answer Special Issue Number  
23 2. If, however, the jury returns a negative answer to  
24 Special Issue Number 1 or if the jury has not answered  
25 Special Issue Number 1, then under the Court's instructions

1 in this charge, do not answer Special Issue Number 2.

2 "If the jury has answered Special Issue  
3 Number 1 yes, then the jury shall answer Special Issue  
4 Number 2 either yes or no. Before Special Issue Number 2  
5 may be answered no, all jurors must be convinced that the  
6 answer to such issue should be no.

7 "If the jury unanimously determines and only  
8 if such determination is unanimous that the answer to  
9 Special Issue Number 2 is no, then the jury foreman will so  
10 record the jury foreman's answer to Special Issue Number 2  
11 by signing his or her name to the finding reflecting such  
12 answer on the form provided for that purpose.

13 "If 10 jurors or more vote yes to Special  
14 Issue Number 2, then the answer of the jury shall be yes to  
15 that issue, and the jury foreman will so record the jury's  
16 answer by signing his or her name to the finding reflecting  
17 such answer on the form for that purpose.

18 "If in answering Special Issue Number 2, the  
19 vote of the jurors is not unanimously no or not at least 10  
20 in favor of an answer of yes, then there shall be no answer  
21 for that special issue, and the jury foreman should not sign  
22 his or her name to any answer form for that Special Issue  
23 Number 2.

24 "Members of the jury need not agree on what  
25 particular evidence supports an affirmative answer to

1 Special Issue Number 2. In deliberating on Special Issue  
2 Number 2 submitted in this charge, the jury shall consider  
3 all evidence admitted at the guilt or innocence stage and  
4 the punishment stage of this trial, taking into  
5 consideration all of the evidence, including the  
6 circumstances of the offense, the defendant's character and  
7 background and the personal moral culpability of the  
8 defendant in determining whether or not there is sufficient  
9 mitigating circumstance or circumstances to warrant that a  
10 sentence of life imprisonment rather than a death sentence  
11 be imposed.

12 "Further, the jury is instructed to consider  
13 mitigating evidence to be evidence that a juror might regard  
14 as reducing the defendant's moral blameworthiness.

15 "You are instructed that under the law  
16 applicable in this case, if the jury answers that a  
17 circumstance or circumstances warranted a sentence of life  
18 imprisonment rather than a death sentence be imposed, the  
19 Court will sentence the defendant to imprisonment in the  
20 Institutional Division of the Texas Department of Criminal  
21 Justice for life.

22 "Under the law applicable in this case, if  
23 the defendant is sentenced to imprisonment in the  
24 Institutional Division of the Texas Department of Criminal  
25 Justice for life, the defendant will become eligible for



1 release on parole but not until the actual time served by  
2 the defendant equals 40 years without consideration of any  
3 good conduct time.

4 "It cannot accurately be predicted how the  
5 parole laws might be applied to this defendant if the  
6 defendant is sentenced to a term of imprisonment for life  
7 because the application of those laws will depend on  
8 decisions made by prison and parole authorities. But  
9 eligibility for parole does not guarantee that parole will  
10 be granted.

11 "Our law provides that a defendant may  
12 testify in his own behalf if he elects to do so. This,  
13 however, is a privilege accorded to a defendant and in the  
14 event he elects not to testify, that fact cannot be taken as  
15 a circumstance against him.

16 "In this case, the defendant has elected not  
17 to testify, and you are instructed that you cannot and must  
18 not refer or allude to that fact throughout your  
19 deliberations or take it into consideration for any purpose  
20 whatsoever as a circumstance against the defendant nor will  
21 you refer to or discuss any matter not before you in  
22 evidence.

23 "At times throughout the trial, the Court has  
24 been called upon to pass on the question of whether or not  
25 certain offered evidence might properly be admitted. You

1 are not to be concerned with the reasons for such rulings  
2 and are not to draw any inferences from them.

3 "Whether offered evidence is admissible is  
4 purely a question of law. In admitting evidence to which an  
5 objection is made, the Court does not determine what weight  
6 should be given such evidence nor does it pass on the  
7 credibility of the witnesses.

8 "As to the offer of evidence that has been  
9 rejected by the Court, you, of course, must not consider the  
10 same. As to any question to which an objection was  
11 sustained, you must not conjecture as to what the answer  
12 might have been or as to the reason for the objection.

13 "Specifically, the Court has sustained  
14 objections and given you explicit instructions to disregard  
15 irrelevant, improper, and inadmissible questions, answers,  
16 and evidence in this trial.

17 "You are reminded of the instruction of the  
18 Court given you in this trial, and you are instructed to  
19 carefully follow those instructions in your deliberations.  
20 You are to deliberate only on evidence that is properly  
21 before you in this trial and to give this case individual  
22 deliberation based only on the evidence admitted before you  
23 in this trial.

24 "You are instructed that you are not to allow  
25 yourselves to be influenced to any degree whatsoever by what

1 you may think or surmise the opinion of the Court to be.  
2 The Court has no right, by any word or any act, to indicate  
3 any opinion respecting any matter of fact involved in this  
4 case nor to indicate any desire respecting its outcome.

5 "The Court has not intended to express any  
6 opinion upon any matter of fact in this case, and if you  
7 have observed anything which you have or may interpret as  
8 the Court's opinion upon any matter of fact in the case, you  
9 must wholly disregard it.

10 "You are further instructed that any  
11 statements of counsel made during the course of the trial or  
12 during argument not supported by the evidence or statements  
13 of law made by counsel not in harmony with the law, as  
14 stated to you by the Court in these instructions, are to be  
15 wholly disregarded.

16 "You are charged that it is only from the  
17 witness stand that the jury is permitted to receive evidence  
18 regarding this case, and no juror is permitted to  
19 communicate with any other juror anything he or she may have  
20 heard regarding the case from any source other than the  
21 witness stand.

22 "It is not permissible of you under any  
23 circumstances in answering the special issues to decide this  
24 same by lot or by straws or by any method of chance.  
25 Deciding a case by lot or by any method of chance is not

1 permissible, and you are instructed in this case that you  
2 must not consider any proposition of this character, but the  
3 answers to the special issues must be determined and agreed  
4 upon by each juror by the facts of the case as testified to  
5 by the witnesses and the law as given you in the charge of  
6 the Court.

7 "You are the exclusive judges of the  
8 facts proved -- of the facts provided, of the credibility of  
9 the witnesses, and the weight to be given to the testimony,  
10 but you are bound to receive the law from the Court, which  
11 is herein given you, and be governed thereby.

12 "After you have retired to consider your  
13 verdict, no one has any authority to communicate with you  
14 except the officer or bailiff who has you in charge. You  
15 may communicate with this Court in writing, signed by your  
16 presiding juror, through the officer or bailiff who has you  
17 in charge. Do not attempt to talk to the officer, the  
18 attorneys, or the Court concerning any question you may  
19 have.

20 "After you have arrived at your verdict, you  
21 may use the appropriate verdict form or forms attached  
22 hereto by having your presiding juror sign the particular  
23 form or forms which conforms to your verdict." That's  
24 signed by Jack Skeen, Jr., Presiding Judge of the 241st  
25 District Court.

1                   The special issues with forms for your answer  
2 or answers are as follows:

3                   "Special Issue Number 1: Is there a  
4 probability that the defendant, Tracy Beatty, would commit  
5 criminal acts of violence that would constitute a continuing  
6 threat to society?

7                   "Answer to Special Issue Number 1: We, the  
8 jury, unanimously find and determine beyond a reasonable  
9 doubt that the answer to this Special Issue Number 1 is yes"  
10 with a place for the Foreman to sign;

11                   Or "We, the jury, because at least 10 jurors  
12 do not find or have a reasonable doubt as to the matter  
13 inquired about in this Special Issue Number 1, find and  
14 determine that the answer to this Special Issue Number 1 is  
15 no" with a line for the Foreman to sign.

16                   "If you have unanimously answered Special  
17 Issue Number 1 yes, then answer Special Issue Number 2.  
18 Otherwise, do not answer Special Issue Number 2.

19                   "Special Issue Number 2: Taking into  
20 consideration all of the evidence, including the  
21 circumstances of the offense, the defendant's character and  
22 background, and the personal moral culpability of the  
23 defendant, is there sufficient circumstance or circumstances  
24 to warrant that a sentence of life imprisonment rather than  
25 a death sentence be imposed?

1 "Answer to Special Issue Number 2: We, the  
2 jury, unanimously find and determine the answer to this  
3 Special Issue Number 2 is no" with a line for the Foreman to  
4 sign;

5 Or "We, the jury, because at least 10 jurors  
6 do find the answer to Special Issue Number 2 is yes, do  
7 hereby find and answer -- do hereby find and determine that  
8 the answer to this Special Issue Number 2 is yes" with a  
9 place for the Foreman to sign.

10 The jury certificate. "We, the jury, return  
11 in open court the above answer or answers as our answer or  
12 answers to the special issue or special issues submitted to  
13 us, and the same is our verdict in this case" with a place  
14 for the Foreman to sign.

15 Counsel, will you approach the bench just a  
16 second?

17 (At the bench, on the record.)

18 THE COURT: Under 4 at the bottom of this  
19 page down here, if you read down here, "You are further  
20 instructed if the jury unanimously returns an affirmative  
21 finding to both Special Issue Number 1," I don't believe  
22 that word --

23 MR. HAWK: It should not be there.

24 THE COURT: I caught that when I was reading  
25 it through with the jury.

1 Are you in agreement?

2 MR. PERKINS: Yes, Your Honor.

3 THE COURT: Are both the State and Defense --  
4 would both the State and Defense be in agreement for the  
5 Court to mark the word "both" out and initial it?

6 MR. HAWK: I think that's fine, Judge.

7 MR. BINGHAM: I agree.

8 (End of bench conference.)

9 THE COURT: The Court will now recognize  
10 Ms. Sikes for opening argument on behalf of the State.

11 Do you need the podium?

12 MS. SIKES: Please, sir.

13 THE COURT: Carleton, would you get the  
14 podium, please, sir?

15 THE BAILIFF: (Complies.)

16 THE COURT: Ms. Sikes.

17 MS. SIKES: May it please the Court.

18 THE COURT: Yes, ma'am.

19 MS. SIKES: Counsel.

20 I want to start by saying that I feel an  
21 unbelievably large responsibility as I stand before you, a  
22 responsibility to the victim of this horrendous crime.

23 May I approach the board, Judge?

24 THE COURT: Yes, ma'am.

25 MS. SIKES: We lose sight sometimes of the

1 fact that this is why we're here, a woman named Carolyn  
2 Callie Meme Click. I feel a responsibility to Ms. Click,  
3 and I feel a responsibility to her friends and to her family  
4 that are sitting out there in that courtroom.

5 I think the best I can hope for is to  
6 somehow, for at least the next 30 minutes or so that I'm  
7 with you, try to do justice to her memory. I'll tell you,  
8 I've thought a long time about what I'd say to you if given  
9 the opportunity to argue the punishment phase of this case,  
10 and I'm going to start by addressing the opening statement  
11 made by Mr. Perkins.

12 Do you remember that? It went something like  
13 this: "Now you'll know why the State was so mad at Tracy  
14 Beatty, mad enough to turn a murder into a capital murder."  
15 Do you remember that opening statement?

16 Let me tell you this: I want to say two  
17 things about that. I think it's a great place to start my  
18 arguments for these reasons: First of all, it wrongfully  
19 shifts the blame, right? I'm going to tell you this: The  
20 State of Texas didn't do anything to change a murder into a  
21 capital murder. We didn't do that. The jury didn't do  
22 that.

23 I want -- I want to make that so clear to  
24 you, that you took an oath, right? You followed the law and  
25 the evidence. You returned the right verdict. If there's



1 anybody in this entire courtroom that took a murder and made  
2 it a capital, can I give you one guess who it is?

3           There he sits. Tracy Beatty. See him  
4 sitting there? He turned a murder into a capital murder by  
5 what you've already found him guilty of doing to that  
6 precious woman. And don't you let anybody tell you  
7 otherwise. You hold your heads up high. You made the right  
8 decision. You based it on the evidence.

9           Now let's talk about that second part of that  
10 opening. It went something like this: "The State of Texas  
11 is mad at Tracy Beatty." Let me tell you this: Do you  
12 think the State of Texas has a right to be mad at Tracy  
13 Beatty? Let me tell you something. I'm not speaking for  
14 all the State of Texas, but I'm speaking for this part of  
15 it: Me, April Allison Sikes, the chief felony prosecutor  
16 for that elected district attorney.

17           And let me tell you something. If you don't  
18 know now when I start that I'm mad, I bet you know it by the  
19 time I finish. And do I have a right to be mad? Yes. Do  
20 you? Yes. This is your community. He's out there in it  
21 killing people.

22           Do you have a right to be mad? Yes. Do you  
23 have to apologize for it? Never. And neither do I and  
24 neither does the District Attorney's Office at all. I'm mad  
25 as a prosecutor, I'm mad as a member of this community, and

1 I'm real mad as a mother. Y'all have kids. You have a son.  
2 You're expecting a child. Does it make you mad? It ought  
3 to.

4 I'm not going to spend any time on the  
5 charge. We talked about that in voir dire. You remember I  
6 told you you would get the law from the Judge. He just read  
7 it to you. Just take it back there just like you did on the  
8 other part of the trial.

9 You know the two questions. The first one --  
10 y'all can probably tell them to me. You know the first one.  
11 Is there a probability that the defendant is going to  
12 continue to commit criminal acts of violence that would  
13 constitute a continuing threat to society, right?

14 You know the second one. Mitigation. It  
15 says, taking into consideration all the evidence, the  
16 circumstances of the offense, the defendant's character and  
17 background, the personal moral culpability of the defendant,  
18 is there sufficient mitigating circumstance, one or more, to  
19 warrant a sentence of life rather than death.

20 We're going to start with that first one.  
21 Future danger is what we've called it all along. You  
22 remember in voir dire when I told you there wasn't going to  
23 be any magic screen that came down; Judge Skeen wasn't going  
24 to say, "Okay. Well, the first part of the trial is over,  
25 right, so let's block that off; don't think about that;

1 let's just move forward"? It didn't happen, did it? He  
2 didn't instruct you on that. Did you hear what he said in  
3 the charge? You can consider all of what you've heard.

4 And that's where we're going to start. When  
5 you go back there in the jury room, I want you to remember  
6 the story of Carolyn Callie Meme Click. You don't have to  
7 forget that. I bet you don't. I bet you won't for a very  
8 long time. And I could drag pictures up here. There's a  
9 stack of them right there. But you know what? I think  
10 she's been disrespected long enough. I really do.

11 But don't forget that story. And the story  
12 goes something like this: It's a story of a mother who  
13 loved her son regardless of his criminal history.

14 You remember Tamara Beatty? She's sitting  
15 right out there on that second row. What did she tell you?  
16 She said, "Meme didn't like him, but she loved him," right?  
17 He sent her to the hospital before. You remember Lieanna  
18 Wilkerson? He left her for dead. That's hard to understand  
19 unless you're a parent.

20 And then, you know, she opened up her home  
21 and her heart and said, "I want us to be at peace." And it  
22 cost her. There is no greater love than that of a parent  
23 and a child. I know. I'm both a child and a parent, and so  
24 are y'all. So Carolyn Click is excited. Her son is coming  
25 home.

1 I could tell you the rest of that story. You  
2 know how it starts out. The first week he's there, she's  
3 excited to take him to Lieanna Wilkerson. She's cooking  
4 dinner. They drive up. Callie is in tears because he  
5 doesn't understand why they've got to drive, berating her  
6 already. Remember? First week home. Callie is in tears.  
7 Do you think she's starting to get disappointed? Probably.

8 Fast-forward to that last day when she talked  
9 to Betty McCarty out there in tears and said what? "I  
10 finally told him to go."

11 Do you think she was sad it didn't work out?  
12 Do you think she was disappointed? Do you think she was at  
13 the end of her rope? Do you think she felt helpless? Do  
14 you think she felt scared? Do you think she had a reason to  
15 be? It looks like she did, didn't she? She didn't know  
16 that minutes later, she's breathing her last breath.

17 Don't go back into that jury room and forget  
18 that he broke her ribs. How many times do you think he hit  
19 her? Do you think if you hit somebody one time, your  
20 second, third, and fifth ribs are broken? How many times do  
21 you think it took?

22 How about her head? Both sides. Do you  
23 think he slammed it into something? Probably. He's done it  
24 before. Remember that? Taking her and hitting her head in  
25 the wall. Don't forget that.

1 Don't forget that he choked her and strangled  
2 her and broke her bones and tied pantyhose around her neck  
3 in a knot. What do you think was going through her mind  
4 when he had his hands around her neck? What do you think  
5 she thought? Why? Do you think she thought, "What have I  
6 done to deserve this? I love you. How can you do this to  
7 me?"

8 Do you think she prayed? And do you think it  
9 mattered? Not to that monster. What did he do? You saw me  
10 grab Mr. Bingham's neck. Do you think he broke any bones?  
11 You go back there, and you think about the force it took to  
12 crush her voicebox, to take from her the very life of the  
13 person that gave life to him. How dare he? Who does he  
14 think he is?

15 Let me ask you this: What kind of monster  
16 does it take to commit that kind of crime? Have you looked  
17 pure evil in the face? There he sits. Take a good long  
18 look because that's it in its purest form.

19 And if that's not enough, he takes her  
20 clothes off. And I'll tell you I can't hardly get past  
21 that, that 42-year-old man taking off the bra and the  
22 panties of his mother. Does that anger you? I'm going to  
23 tell you, it infuriates me. Am I mad at Tracy Beatty? You  
24 bet I am.

25 And if that's not enough, then he goes out

1 and he digs a hole, and he dumps her in it like she's some  
2 kind of discarded trash. You think that's the kind of  
3 person that Dr. McNeel and Dr. Gripon were describing to you  
4 yesterday? Yes. Callous, unfeeling, no social conscience.  
5 Do you think they were right? Yes. And every single thing  
6 you've heard in this courtroom tells you they're right, both  
7 of them.

8 And if that's not bad enough, what does he do  
9 after that? He dumps her nude body in that hole and does  
10 exactly what? He spends her money, takes her car, continues  
11 to degrade her, spends her hard-earned money on dope to  
12 shoot into his sorry body.

13 And probably the worst thing that I just  
14 really can't hardly get over is that he touched her things.  
15 You know, they may be trash to a lot of people, but let me  
16 tell you something. They meant something to her.

17 I've spent a lot of time thinking about those  
18 things. I can't hardly get past it. I think about her  
19 jewelry, and I wonder, did somebody special give that to  
20 her? Did Tamara play with it when she was playing dress-up  
21 at her grandma's house, at Meme's? And I think, how dare he  
22 touch her things? He had no right.

23 This capital murder case is the ultimate  
24 betrayal. He betrayed the mother who loved him. And we  
25 know she did. Tamara Beatty told you that. Meme took those

1 kids to see him. Where? The penitentiary, where he spent  
2 his whole life. She loved him, and it cost her her life.  
3 And I beg you not to forget that.

4 The facts of this case show you that Tracy  
5 Beatty is a future danger. They answer Special Issue  
6 Number 1. And if that's not enough, you got to hear about a  
7 little baby named Ashley Coomer. You remember her? 18  
8 months old, 19 months old. Do you think that crime is  
9 important in determining future danger?

10 Think about this. You think about what kind  
11 of person it takes to take an extension cord and expose a  
12 wire and touch the head of a child, one and a half, for the  
13 pure pleasure of it. Did he do it to watch her cry? Did he  
14 touch it on her tummy? You heard her mommy say it looked  
15 like a welding torch had touched her tummy. Did he do it to  
16 watch her skin burn, to smell what it was like?

17 What was going through her mind? How about,  
18 "Why is he hurting me? What did I do wrong? Where's my  
19 mommy?" And the baby hides in the closet, too young to help  
20 herself. Just old enough to hide.

21 Another victim left in the wake of the evil  
22 that is Tracy Beatty, a baby who lost the sparkle in her  
23 eyes. Her mom told you she wasn't the same. And what was  
24 her crime? Did she cry? Did she want to play? Was she  
25 hungry? Was she thirsty?

1 Does that show you Tracy Beatty's a future  
2 danger? You bet he is. The evidence shows you what Tracy  
3 Beatty does to people. And I could go through a long list  
4 of victims he left in his wake.

5 Let me group it like this: He curses them.  
6 He humiliates them. He discriminates against them based on  
7 the color of their skin. He spits in their face. He shocks  
8 them. He stabs them. He burns them. He bites them. He  
9 breaks their bones. And finally he kills them. Does that  
10 about cover it?

11 That's why I say take a good long look.  
12 There evil sits. It doesn't matter what a person's age is  
13 either, does it? He's got victims from 18 to 19 months old  
14 to 62 years old, family members to strangers. And his  
15 victims have endured everything from humiliation to capital  
16 murder.

17 You know what I can't get out of my mind is  
18 that letter he wrote to Tamara Beatty -- there she sits --  
19 saying, "You know what? You're worthless" because she's a  
20 middle-aged kid that happens to be dating a person whose  
21 skin is a different color.

22 So what? What was her crime? Trying to have  
23 a relationship with a sorry dog who's been in the pen his  
24 whole life. That was her crime. You're not worthless. Let  
25 me tell you something, Tamara Beatty. There's one worthless



1 person in this courtroom, and it's not you. Another victim  
2 left in the wake of Tracy Beatty.

3 And his victims have been guards, and his  
4 victims have been inmates, and his victims have lived, and  
5 his victims have died. Let me tell you this: You remember  
6 we talked a lot about what the definition of society is? I  
7 don't think it matters.

8 Let me tell you something. If your  
9 definition is kids, he's hurt them; if your definition is  
10 adults, he's hurt them; family members, he's hurt them;  
11 strangers, he's hurt them; guards; inmates. You name it,  
12 he's done it.

13 And it doesn't take much to become one of his  
14 victims. You can be a guard and say, "You know, you're  
15 really supposed to get your hair cut." Kapow, your bones  
16 are broken like that.

17 Let's talk for a second about how he spent  
18 his life. I'm not going to read all of this. Here's the  
19 drug use: 10, 13, 14, 15, 16, 23, 22, on into the pen,  
20 alcohol, marijuana, hasheesh, mushrooms, cocaine, meth,  
21 speed, LSD, buying and selling, more victims. If you're a  
22 person who has a drug problem, why don't you just go and  
23 sell it to a bunch of other people? Create a bunch more  
24 problems in their lives.

25 Here's his criminal history that I could fit

1 on one board. Look at it. Thefts, escape, DWIs, injury to  
2 a child, probation revoked, and he hadn't been out since,  
3 not for more than nine months. There it is. Here's other  
4 arrests he's admitted to. You name them. Evading arrest,  
5 criminal trespass, theft by check, possession of marijuana,  
6 carrying weapons, DWIs. You name it, he's done it.

7           You know what that tells you? That tells you  
8 that there is nothing in this system that hadn't been tried  
9 at which he hadn't failed. Four parole attempts; four  
10 failures; the last one being just about the worst one of  
11 all, wouldn't you agree? He couldn't make it 60 days  
12 without killing his mother and throwing her in a hole.

13           Tracy Beatty does what Tracy Beatty wants to  
14 do, period. He is a selfish career criminal who hurts who  
15 he wants to hurt when he wants to hurt them and in the way  
16 he chooses to do it.

17           You remember what Dr. McNeel said? If  
18 anything inconveniences him, you're in trouble. He snaps.  
19 Impulse control: None. Selfish. Sociopathic personality.  
20 You think those things are important in determining future  
21 danger? Sure they are. How about the escalation of his  
22 violence? How about the fact that he can't make parole?

23           How about the fact that you've got to be  
24 100 percent evil to electrocute a child for the fun of it  
25 and to murder your own mother? You think about a person

1 like that, and then you ask yourself, is he going to care  
2 about future crimes? Is he going to stop and think twice?  
3 Are you kidding me?

4 Do you think he's going to go down to the  
5 penitentiary and go, "Oh, well, I probably ought to not hit  
6 that guard in the face." Gosh, he's so far past that,  
7 that's laughable. That's ridiculous, and it's also  
8 pathetic. He doesn't care. What makes you think he's going  
9 to start caring now? He never has, and he never will.

10 They also told you he's not choosy about  
11 where he commits his crimes. In the free world, we know  
12 about weapons and drugs and alcohol and felony thefts and  
13 the 18-month-old baby. He stabbed a 22-year-old man. He  
14 assaulted his mother, sent her to the hospital, and then  
15 committed the ultimate crime of capital murder. That's  
16 while out here with me and you in the few months he's  
17 actually been out.

18 While incarcerated, he's escaped; he's fought  
19 with inmates; he's spit on officers; he's cursed officers;  
20 he's threatened to kill officers and their families; he's  
21 committed the felony of aggravated assault on an officer;  
22 he's possessed contraband. And while awaiting trial for  
23 capital murder, he's so concerned, he's doing what in our  
24 jail, in your jail? Making shanks. You think he was gonna  
25 use it? He has before. It wouldn't be the first person he

1 stabbed.

2                   You remember Dr. Gripon told you this phrase:  
3 "Past conduct is the best predictor for future conduct.  
4 That's why we spent so much time on his past record. It's  
5 pretty hard to think of a crime he hadn't committed.

6                   How about the evidence that you heard from  
7 the guards and from Mr. Smithey and Mr. Rogers when they  
8 told you -- every one of them said the same thing -- there  
9 is no place within the system where you can place a  
10 defendant and keep other inmates and guards safe. You  
11 remember that?

12                   Fights, inmates on inmates, inmates on  
13 guards, weapons made, and weapons used, gangs and crimes and  
14 violence. And do you think that Tracy Beatty, who has  
15 assaulted or threatened officers 16 times already -- that  
16 was before he killed his mother, before he made this  
17 weapon -- do you think he would go to jail and be a future  
18 danger?

19                   Have we proven that to you beyond a  
20 reasonable doubt? Probably. Probably will. More than  
21 probably. That's what the evidence shows you.

22                   I'm going to ask you this: Everything we've  
23 talked about so far, that's before the doctors came on. If  
24 I had asked you prior to Dr. Gripon and Dr. McNeel  
25 testifying, do you think he's going to be a future danger,

1 would you have an answer? But, you know, they came on  
2 anyway, and they testified. And did it make you feel better  
3 that they confirmed what you already knew?

4           They told you they had indicators, things  
5 that were important to them, things that told them he was  
6 going to be a future danger. Criminal history beginning at  
7 an early age, variety of crimes committed, escalation of  
8 violence, many types of victims, chronic drug and alcohol  
9 abuse, he had sociopathic, antisocial disorder, lack of  
10 impulse control, explosive temper, history of violence while  
11 incarcerated, he made and possessed deadly weapons, and it  
12 was hands-up and up-close personal violence.

13           They used those things. Are those things  
14 important to you? You bet they are. And what did they  
15 conclude? No indication that the criminal acts of violence  
16 will stop. None. High probability of future danger.  
17 That's what the doctors said. Did they confirm what you  
18 already knew? They're right, and so are you. And the  
19 answer to Special Issue Number 1 is yes.

20           And then you move on to Special Issue Number  
21 2, the mitigation section. And I'll tell you this:  
22 Mitigation is something that lessens the moral  
23 blameworthiness of the defendant. And I'm not going to  
24 spend very much time on it. Can you guess why? There is no  
25 mitigation. There's none. There's not one single, solitary

1 circumstance that justifies a life sentence over a death  
2 sentence. Not one.

3 What could it be? What have you heard?

4 Well, you heard he came from a single-parent home. He had a  
5 hip replacement. He's got skin disease. He has one kidney.  
6 He drinks and uses drugs. But you know already that's no  
7 defense.

8 Let me tell you, you've already heard it once  
9 today, but I've got a real complicated legal argument for  
10 those things, things like, "I came from a single-family  
11 (sic) home." You know what it goes like? Listen. So what?  
12 Do you think there's not people in this very courtroom who  
13 came from single-parent homes?

14 The doctor wants to replace my knee. I can  
15 assure you I'm not going to go kill my mother. Hip  
16 replacement, skin disease, single-parent home. Are you  
17 kidding me? Do you think those things give him the right to  
18 go and take the life of his mother in cold blood? It sure  
19 didn't. It's ridiculous.

20 You've heard no mitigation that rises to that  
21 level we talked about to justify life over death. The  
22 evidence has shown you -- it's told you, not me -- the  
23 evidence you heard in this courtroom tells you the answers  
24 to the special issues. And you know what they are.

25 The first one is yes; Tracy Beatty is a

1 future danger. And the second one is no; there is no  
2 mitigation to justify a life sentence rather than death  
3 sentence.

4 I told you in voir dire that you would know  
5 by the answers to your questions the resulting punishment.  
6 You remember that? And you do. And you know that when you  
7 answer yes and no, that Judge Skeen is going to impose the  
8 death penalty.

9 There will be no life sentence. There will  
10 be no 40 more years of a prison system trying to protect  
11 other people from Tracy Beatty. That cannot be done, and  
12 you know that. You can't send him back to general  
13 population and let him earn his way back into ad. seg. You  
14 know about earning your way back in. You know how you do  
15 that? Commit future acts of violence.

16 Don't give him another victim. The  
17 penitentiary couldn't control him before November 25th,  
18 2003, when Ms. Click lost her life. They can't control him  
19 now. He's over there making knives. And they can't control  
20 him in the future. They just can't. And the evidence that  
21 you heard does not require them to do it. We've reached the  
22 end. We have finally reached the end.

23 Ladies and Gentlemen, this is a death penalty  
24 case. There's just simply nothing left to do. There can be  
25 no more crimes. There can be no more victims. It ends with

1 you. You have the power with your verdict, and it's time  
2 for you to let the evidence lead you to justice. It's time.

3 I plead with you to remember the acts of  
4 Tracy Beatty, his life of violence, and I plead with you to  
5 listen for the voices of his victims, those of the past and  
6 those that would be in the future.

7 When you answer those questions according to  
8 the evidence, the death penalty is going to be imposed, but  
9 it will be imposed based on the actions of that man, Tracy  
10 Beatty. Don't let anybody guilt you about this verdict,  
11 just like we talked about when we started. You see, we've  
12 come full circle.

13 He did it. He spent his life earning this  
14 sentence. He knows what your verdict is going to be. He  
15 chose that punishment. He chose it when he chose to commit  
16 these crimes his whole life, ending with the one with his  
17 hands around the neck of his mother.

18 So go back in that jury room and answer those  
19 questions based upon the evidence you heard, and when you  
20 do, the death sentence is going to be imposed. And at long  
21 last, at very long last, justice is going to finally be  
22 served.

23 THE COURT: Thank you, Ms. Sikes.

24 Mr. Perkins.

25 MR. PERKINS: Thank you, Judge.



1 A JUROR: Judge?

2 THE COURT: Yes.

3 A JUROR: I need a break.

4 THE COURT: We will take a 15-minute recess.

5 All rise for the jury.

6 (The jury leaves the courtroom.)

7 (Recess.)

8 (Open court, defendant present, no jury.)

9 THE COURT: Back on the record in Cause  
10 Number 241-0978-04, the State versus Tracy Beatty. State's  
11 counsel is present; the defense counsel is present; and the  
12 defendant is present.

13 Bring in the jury, Carleton.

14 (The jury enters the courtroom.)

15 (Open court, defendant and jury present.)

16 THE COURT: Be seated, please. Thank you.

17 The Court will recognize Mr. Perkins.

18 MR. PERKINS: May it please the Court.

19 THE COURT: Yes, sir.

20 MR. PERKINS: Counsel for the State.

21 Good morning, Ladies and Gentlemen.

22 I want to talk to you about a couple of  
23 things, but the very first thing I want to do is to tell you  
24 how much I appreciate people like April Sikes. She is a  
25 tremendous advocate for her side. She -- and there's

1 nothing wrong with this -- had lots of y'all in tears and  
2 rightfully so, because what Tracy Beatty did is  
3 indefensible. There's no excuse.

4 I told you that in the first stage of the  
5 trial. There's no excuse for killing your unarmed,  
6 62-year-old mother. That's it. Just as plain and as simple  
7 as I can say it. He's brutal; he's vicious; he's violent;  
8 he's a criminal; he's a dope user; he's a thief; he's a -- I  
9 mean, how many bad things do I have to say, does the State  
10 have to say, for you to believe it?

11 Now, I'm going to draw the line at something,  
12 and I'm going to say something that may be offensive to you,  
13 hard to understand, offensive to the State, hard for me to  
14 understand. Tracy Beatty is not 100 percent evil. Tracy  
15 Beatty is not worthless. Tracy Beatty is a child of God.  
16 Believe it, not believe it. Understand it, not understand  
17 it.

18 What we have to defend against at this stage  
19 of the trial is the same thing that I've been defending  
20 against all along. Now, I bet some lights have come on for  
21 some of you as to why we were giving examples about "I'm the  
22 worst person in the world. I'm the worst scumbag that there  
23 ever was." You know what? He's not 100 percent worthless.  
24 And it's very subtle thing. And Ms. Sikes is very good at  
25 what she does.

1                   It's easier to kill somebody if you  
2 dehumanize them first; make them 100 percent evil; make them  
3 a monster; make them worthless. And you know what? It's  
4 easy to do when you have these kind of facts, right?

5                   All you've got to do is just cross that last  
6 bridge and say there's nothing about him worth saving. He's  
7 worthless, 100 percent evil. He's all these things that the  
8 State says.

9                   I want to talk to you a minute about the  
10 cons -- well, I probably should sit down and let Ken talk  
11 about this, because he's a lot better than I am -- the  
12 concept of respect, respect for other people's opinions,  
13 respect for the law, respect for life. Tracy Beatty doesn't  
14 respect any of those.

15                   Does that mean you shouldn't? Does that mean  
16 I shouldn't? Does that mean that once the State convicts  
17 him, you know, through their evidence and your verdict? And  
18 let me tell you something. I respect your verdict. It is  
19 hard to be on a jury. And I disagree with it.

20                   You know what? This is America. I still  
21 have the right to disagree with your verdict, but I respect  
22 it. I know y'all didn't go back there and five minutes  
23 later come back with a verdict. I respect your hard work.  
24 I admire it.

25                   I tell you, that it's -- well, I can't tell

1 you what I want to say about what it is to be on a jury, but  
2 it's not good. I respect it. I just respectfully disagree  
3 with it.

4 And do you think I'm going down easy? Do you  
5 think I'm going down without a fight? You don't know me.  
6 You don't know that I'm going to stand up for the worst  
7 scumbag that you've ever seen, but I am, because he's not  
8 worthless. He's not 100 percent evil. You can look him in  
9 the eyes all you want to, and you're not going to see the  
10 devil sitting over there no matter how hard you squint.

11 You're going to see a child of God sitting  
12 over at that table and a child of God who has made terrible,  
13 horrible criminal decisions his whole miserable life. How's  
14 that?

15 You know, I'm going to echo something that  
16 Ms. Sikes said. Ms. Sikes said that she felt tremendous  
17 responsibility. Oh, yeah? Switch sides of the table and  
18 see how you feel. She thinks it's scary on her side of the  
19 table. Let's switch sides for a while. I'll take this  
20 side. This is the easy side. I've been over here.

21 I feel such tremendous responsibility,  
22 because I am charged with watching out for the legal rights  
23 of somebody who the State is trying to get y'all to execute.  
24 And she feels responsibility? And I'll tell you how far  
25 that responsibility goes with me.

1 I look back -- here's the transcript of the  
2 trial right here (indicating), and when we get through  
3 during the day, I get to go home and read that stuff. And  
4 you know what? I am an idiot. Here I am. I'm an idiot.

5 You know why? I guess my parents were  
6 idiots. I'll blame it on them. I don't know why I'm an  
7 idiot. Why did I miss something so obvious? Why did I miss  
8 something so important that if I had caught it and pointed  
9 it out to you, we might not even be here. It might be a  
10 situation where we had eliminated the death penalty entirely  
11 as a possibility.

12 And you know what? I talked at closing  
13 argument in the guilt or innocence phase about Ken's bad  
14 choice of words, nobility instead of macho thing. If that's  
15 the worse thing that Ken Hawk ever does, Ken Hawk will be a  
16 genius. I am an idiot.

17 Because you know what I missed? Something  
18 that's not only mitigating but might have been exculpatory.  
19 You are entitled to consider all of the evidence. It's  
20 right there in the Court's charge that you're going to get  
21 to take back there with you, all the evidence from the guilt  
22 or innocence phase. And if you consider lingering, residual  
23 doubt as mitigating, you're entitled to consider that.

24 Let me talk to you about something that dumb,  
25 old Robert missed. You remember Mr. Bingham's argument at

1 the first stage of the trial he argued. One of the  
2 arguments was that Tracy Beatty was guilty because he stole  
3 Carolyn Click's car and he's over in Malakoff about an hour,  
4 hour and a half after she disappears. Y'all remember that,  
5 I'm sure.

6 I'm an idiot. I knew that that couldn't be  
7 right. And if you'll recall the evidence in the case, I  
8 pointed out to you that there were receipts showing that the  
9 car wasn't -- well, that the car was gassed up in Malakoff  
10 on the 29th and not on the 25th.

11 And I knew that Stacey Killough had to be  
12 wrong about her dates and him showing up that soon  
13 afterwards and having exercise and control over property.  
14 And I know that y'all found him guilty of burglary of a  
15 habitation -- or while in the course of committing burglary  
16 of a habitation.

17 And so I'm thinking like, you know, their  
18 argument that he stole the car and went over there and that  
19 he was there an hour to an hour and a half later, I can  
20 understand why you would do it. Again, I respectfully  
21 disagree with that verdict, but I understand.

22 But I am such an idiot. I went back and read  
23 the transcript to try to figure out, based on the notes sent  
24 out about where he was and all of that stuff. I reread it,  
25 reread it, reread everybody's. I knew Stacey Killough had

1 to be wrong, and that's why we brought up those gas card  
2 receipts and everything else.

3 August the 3rd, 2004, April Sikes asks  
4 Lieanna Wilkerson, "Did you see Tracy Beatty on November the  
5 25th, two days before Thanksgiving?"

6 "Yes."

7 "Under what circumstances?"

8 "He ate dinner at my house."

9 "You cooked dinner that night?"

10 "Uh-huh."

11 Still not paying attention to that yes or no  
12 thing.

13 "Do you recall what time it would have been  
14 that he was at your home?"

15 "The latest would have been about 6:00 or  
16 6:30. I alternated weeks. I worked either 9:00 to 6:00 or  
17 8:00 to 5:00, depending on what week it was. But it would  
18 have been 6:30 at the latest that he would have been there  
19 for dinner."

20 "Do you remember what you cooked?"

21 "Spaghetti."

22 "Did y'all eat dinner together then?"

23 "Yes."

24 "How long was he at your home?"

25 "Until 10:00."

1 "Do you know where he went after that?"

2 "Home."

3 So I'm an idiot, and this proves that I'm an  
4 idiot. I let them stand up here and argue that my client  
5 was in Malakoff in the car an hour after she disappeared.  
6 They've got to prove while in the course of committing, and  
7 I just missed it. It went right between my legs, Bill  
8 Buckner-style, for you baseball fans.

9 Did they ask him anything about the next day?  
10 April Sikes asked, "Did you see Mr. Beatty on the 26th, the  
11 day before Thanksgiving?"

12 "Yes."

13 "Under what circumstances?"

14 "He brought me a turkey."

15 So all of the questions about the 25th and  
16 the 26th and all of that business about him being in  
17 Malakoff an hour, hour and a half afterwards, it's not true.  
18 She's mistaken, or she's lying. It doesn't make any  
19 difference, and it's too late now for him to be guilty of  
20 anything other than capital murder. But it's not too late.

21 I sat over on that side of the table and  
22 heard Mr. Bingham say time and again that it doesn't make  
23 any difference when he used the car. That's a slick lawyer  
24 trick.

25 Maybe the gist of my argument was lost.



1 Since the State has the burden of proving beyond a  
2 reasonable doubt that the intent to commit the underlying  
3 felony had been formulated at the same time or prior to the  
4 intent to commit the murder, my point was the fact that he  
5 didn't use any of that stuff until days and days later  
6 created a reasonable doubt about that.

7           You will understand -- and I'm going to talk  
8 some more about this in a second -- but it's hard to sit  
9 here and listen to a legitimate argument to be discounted as  
10 a slick lawyer trick. And there was a big debate, and y'all  
11 may remember this, about whether Carolyn Click told or asked  
12 Tracy Beatty to leave. I know that y'all recall that.

13           Mr. Bingham stood up, because he gets to go  
14 last and he's going to get to go last again today, and he  
15 read part of the testimony to you. Part, the last part.  
16 What he didn't read to you is this: August 2, 2004, Brett  
17 Harrison asked Betty McCarty, "Did she" -- talking about  
18 Carolyn -- "indicate to you anything about her relationship  
19 with Tracy Beatty at that time?"

20           Answer: "She was unhappy."

21           Question: "What did she tell you?"

22           Answer: "She was unhappy about it, and  
23 had -- did he say I couldn't say what I interrupted?"

24           "Ma'am, you can."

25           "She said she asked him to leave that day and

1 that she said 'I've put up with all I'm going to put up  
2 with, and I had asked him to leave,' and she was upset about  
3 it, and that's the last time I saw her."

4 Question by Mr. Harrison: "Did she tell you  
5 what time that day she told Tracy Beatty to leave?"

6 You can look, read, whatever you want, all  
7 through there. The only one that ever said "told" was them.  
8 The only one who ever said "kicked out" was them. Does that  
9 make any difference?

10 Even if it didn't make any difference on  
11 whether or not it created a reasonable doubt about the case,  
12 you have the right to consider all the evidence in the case  
13 when deciding is there sufficient mitigation in the case  
14 that warrants a life sentence rather than the death penalty  
15 be imposed?

16 I'm not trying to trick you. I'm trying to  
17 show you what the evidence in the case shows and point out  
18 what it doesn't show.

19 What I want to talk about is, is this:  
20 Ms. Sikes stands up and says there's no mitigation in the  
21 case, not that it's insufficient, but there's just none at  
22 all. This is Mr. One-Hundred-Percent-Evil; this is  
23 Mr. Worthless. Those are words that I didn't choose.  
24 That's the words chosen by the State of Texas, because it is  
25 so much easier to get a jury to cash in somebody's chips and

1 get them out of the game from now on if they don't look at  
2 them as being human.

3 That human being, that child of God is the  
4 one who contacted law enforcement and told them, "I've got  
5 to tell them about some bodies that are buried." That was  
6 him. That human being is the one who led the police to his  
7 mother's body.

8 Now, does that give him the right to kill her  
9 in the first place? Of course not. Something being  
10 mitigating and something being a defense are two different  
11 things. It's apples and oranges.

12 She says there's nothing mitigating because  
13 it didn't give him the right to do it. That's like picking  
14 oranges off an apple tree. You're standing under the wrong  
15 tree, Ms. Sikes. He's the one that solved her  
16 disappearance. He's the one that contacted law enforcement.  
17 He's the one that led them to the body. He's the one that  
18 confessed to a murder that he didn't do and finally came  
19 around and told the truth about him killing his own mother.

20 Do you have a right to be mad at Tracy  
21 Beatty? Yeah, Tracy Beatty is a dirtbag. He killed his own  
22 unarmed mother in a violent fight, not to rob her, not to  
23 burglarize her. I don't care what y'all said. Respect your  
24 opinion and disagree with it. He murdered his mother.

25 And for murder or even murder, he could gone

1 to prison for the rest of his life, just like you can still  
2 do today. They want to stand up and argue there's no way to  
3 ensure that guards would be safe if he was in TDC. Well,  
4 that's true.

5 And there's no way to ensure that guards  
6 would be safe in TDC if he's not down there. There's no way  
7 to ensure that I'm going to be safe walking out to my car  
8 today. There's no way to ensure that when I go out to get  
9 the paper in the morning, I'm not going to get struck by  
10 lightning.

11 There is the second fold in the way that they  
12 attack to try to get a death penalty case. They scare you.  
13 I'm scared of everything. It's that turtle mentality.  
14 Let's all duck up in the shell. Let's not live our lives  
15 because we're afraid of what might happen.

16 And you know what? It's real easy to scare  
17 you of Tracy Beatty. Real easy. I mean, that's like  
18 shooting fish in a barrel.

19 You know what was amazing to me? That guy  
20 from TDC that came down here and talked about, because of  
21 their procedures, if you're convicted of capital murder, you  
22 don't automatically go to administrative segregation. You  
23 know what? I live in this community. I'm a father. I  
24 wouldn't want Tracy Beatty anywhere around my daughter.

25 I mean, so what? He is never going to be

1 around her ever again. And after today, he will never be  
2 around me ever again. He will never be around Mr. Hawk ever  
3 again or any of these people or any of y'all ever again.

4 They want you to kill him because there's no  
5 safe place for him. And what's amazing -- I'm getting back  
6 to it -- what's amazing to me is that they won't put him  
7 straight in administrative segregation, but they can, and it  
8 has happened.

9 You can automatically go -- and I'm telling  
10 you, Ladies and Gentlemen, if there was ever a poster child  
11 for it, he's sitting right to Mr. Hawk's left. Got every  
12 qualification to go. Keep him by himself 24 hours a day  
13 except for the one hour a day he gets to go out into the dog  
14 run with two guards with him.

15 Can you protect those two guards from Tracy  
16 Beatty and everybody else in the world? The answer is no.  
17 I didn't see a special issue on that. That's not what the  
18 question is.

19 So when they get in here and tell you that  
20 there's not anything sufficiently mitigating, ask yourself  
21 this: Would Carolyn Click's body still be in that hole  
22 except for him leading law enforcement to it? Maybe, but  
23 no, he calls the cops and says there's bodies buried, leads  
24 them out there and shows them, because it's two days before  
25 Christmas and he says he wants his mother out of the hole

1 before Christmas.

2 But, see, you can't put anything in the  
3 State's bank, because if you start doing that, if he starts  
4 getting any kind of credit at all, all of a sudden, he's not  
5 100 percent evil. All of a sudden, he's not 100 percent  
6 worthless. All of a sudden, he's not the epitome of evil  
7 that they want you to believe so you will help them kill  
8 him.

9 Elevate yourself above the fray. We don't  
10 have to dehumanize ourselves to deal with Tracy Beatty. We  
11 don't have to sink to his level to deal with him. This is  
12 still a civilized society.

13 You know, I hate my job so much sometimes.  
14 It's unpleasant, distasteful, thankless. It's about like  
15 being on a jury, I suspect, probably.

16 What the State wants you to be able to do is,  
17 is to say believe him when it's convenient for us, and let  
18 us call him a liar the whole rest of the time. And I'm  
19 going to give you some examples of that, because it's kind  
20 of like they're in a Chinese restaurant and they're ordering  
21 like one off of menu A and one off of B and a couple from  
22 over here. They're just all over the place with it.

23 Let me give you an example. When it's  
24 convenient or helpful to the State, they want you to believe  
25 him. "I'm in the Aryan Circle." Hey, believe it; it helps.

1 He didn't have any tattoos or anything to show it, but he  
2 said it on occasion.

3 How many other things has he said that they  
4 want you to disbelieve? Well, when he admitted to killing  
5 his mother after a horrible fight, they don't want you to  
6 believe that. We can't have you believe him then.

7 When he says to -- I don't even know what her  
8 name was, his parole officer -- Simone Norman. Help me out.  
9 Simone Norman. When she asked him, "Have you seriously  
10 thought of killing somebody," and he says, "Yes," we want  
11 you to believe that.

12 When he says to Betty McCarty, "I have until  
13 December the 17th to be out of the house," they can't have  
14 you believing that.

15 It's pick and choose, pick and choose. And  
16 the way to pick and choose is dehumanizing him. Pick and  
17 choose. Believe what's good for us; disbelieve everything  
18 else. Follow us; we will never mislead you. Never.

19 And so I don't blame them, and I said all  
20 along I didn't blame them for being mad at Tracy Beatty.  
21 But when you let anger blur your vision as to what things  
22 are, then it's a different story.

23 They want you to answer Special Issue  
24 Number 1 yes, and they want you to answer Special Issue  
25 Number 1 no, because they know that that will ensure that

1 the Court will assess a death penalty against Tracy Beatty.  
2 They want you to do that.

3 And these answers and stuff makes this thing  
4 seem kind of surreal to me. Sometimes I'm standing here and  
5 I think like -- do you ever get one of those out-of-body  
6 kind of experiences where you're standing there and you're  
7 like, I-can't-believe-the-stuff-that's-going-around-you kind  
8 of feeling?

9 That's kind of the way that I feel as I stand  
10 here right now. This is not pretend. It's not a game.  
11 They are really and truly trying to get answers that will  
12 result in him being executed, even though he led officers to  
13 her body, even though he solved her disappearance, even  
14 though he confessed to killing her.

15 Each one of you -- there's 12 of you up there  
16 on the jury, and every single one of y'all have the power by  
17 yourselves to stop this.

18 The Court's charge, in paragraph 9, says that  
19 you're instructed that any statements of counsel made during  
20 the course of the trial, during argument which are not  
21 supported by the evidence or statements of law made by  
22 counsel not in harmony with the law, as stated to you by  
23 Court, should be wholly disregarded.

24 Every single one of you have the power to  
25 find mitigation in the case. Nobody can tell you what



1 mitigation is. Nobody, not even the Court, will tell you  
2 what sufficient mitigation is. It's whatever you think it  
3 is.

4           And I want to go back for a minute about  
5 talking about respecting other people's opinions. Your  
6 opinion is as important as yours, and yours is as important  
7 as yours, and yours is as important as his, and yours is as  
8 important as all of theirs, and yours matters just as much  
9 as anybody else, and yours makes all the difference, and  
10 yours is as important as anybody else on the jury, and so is  
11 yours and yours and yours.

12           Every single one of you have the power and  
13 the ability to just say no. Every single one of you have  
14 the power and the ability to just say yes.

15           When you get down to Special Issue Number 2,  
16 if you believe -- and this is the Court's instructions; this  
17 is not me with a slick lawyer trick; this is not me making  
18 something up; this is straight out of this charge. Every  
19 single last one of you have the power on Special Issue  
20 Number 2 to find sufficient mitigating circumstances and to  
21 hold fast to your convictions.

22           You know if that happens, the Court will  
23 impose a sentence of life imprisonment, and Tracy Beatty  
24 will go to prison and stay in prison until he is 83 years  
25 old, if he lives that long, before they ever even think

1 about paroling him. Some of you may be around, but I won't  
2 have to worry about it.

3 And I'll tell you this: If the Parole Board  
4 wants to parole him, with his record, he's not ever going to  
5 get out of prison.

6 MR. BINGHAM: Judge, I'm going to object to  
7 that statement as a direct contradiction to the law.  
8 There's no way to predict what the Parole Board will or will  
9 not do. He's eligible in 40 years.

10 MR. PERKINS: I'll rephrase it, Judge.

11 THE COURT: Go ahead, Mr. Perkins.

12 MR. PERKINS: Statistically speaking, a white  
13 male in this country lives to almost 80. It would take some  
14 kind of trick for him to live long enough to ever be  
15 eligible for parole.

16 The last topic I want to talk to you about is  
17 this: I've already talked to you about each of y'all having  
18 the power. What I want to talk to you next about is, is  
19 having the great responsibility that comes along with that  
20 power. And I don't know where this quote came from, but  
21 "With great power comes great responsibility" is the way  
22 that I remember it.

23 Each of you, as Ms. Sikes said, took an oath  
24 to render a true verdict, so help you God. I know that  
25 during voir dire, a lot of times the State or the Defense

1 would ask you how you felt about the death penalty, and they  
2 would ask if it was based on Biblical feelings or religious  
3 beliefs, the eye-for-an-eye thing.

4 I feel compelled, given the questions that  
5 were asked in voir dire of you, to follow up on that.  
6 You've heard it said that eye for an eye, tooth for a tooth,  
7 but I'll tell you, "Do not resist an evil person. If  
8 someone strikes you on the right cheek, turn to him the  
9 other also." An eye for an eye and a tooth for a tooth is  
10 not the way.

11 And I'm going to disagree with Ms. Sikes when  
12 she says there's no greater love than the love of a mother  
13 for a child. I believe that there is a greater love than  
14 that, and I want to talk to you for a second about the  
15 concept of grace.

16 Grace is not something that we earn by good  
17 deeds. Grace is not something that you lose by evil deeds.  
18 Grace is a gift that's given to the undeserving. Grace is  
19 something that he didn't show her. Grace is our salvation.

20 Any one of you can answer yes on the last  
21 special issue. You have that absolute right. If you find a  
22 sufficient mitigating circumstance and you answer that last  
23 special issue yes, Tracy Beatty will be sentenced to the  
24 penitentiary for life.

25 I don't want you to cave in to pressure. I

1 don't want you to thirst after vengeance. Vengeance doesn't  
2 belong to us. I want you to respect each other's opinions  
3 and beliefs.

4 It's a terrible thing that Tracy Beatty did  
5 to Carolyn Click, and he's robbed his family of her presence  
6 as a mother and an aunt, cousin, sister, or grandmother.  
7 And we've seen a lot of abbreviations over the last week go  
8 up on this board. We've seen people write UCW and PCS and  
9 all these abbreviations for all these crimes that Mr. Beatty  
10 has committed in his life.

11 I've got one last thing to put up here, one  
12 last abbreviation. Your oath is "so help you God." I don't  
13 relish you the responsibility that you have to answer it.  
14 That's the last abbreviation I want y'all to see before  
15 y'all go back there and deliberate on what should be done.  
16 We can deal with him without killing him.

17 Thank y'all. I really appreciate y'all's  
18 time and attention.

19 THE COURT: Thank you, Mr. Perkins.

20 Mr. Bingham, 30 minutes.

21 MR. BINGHAM: Judge, may I have a call when I  
22 have seven minutes remaining?

23 THE COURT: Yes.

24 MR. BINGHAM: The first thing I want to do is  
25 tell you myself, again, how much I appreciate your service

1 in this case. And I'm going to talk a little bit about  
2 Mr. Perkins' arguments.

3 One thing that the Court has told you  
4 throughout this whole trial is you have to base your verdict  
5 on the evidence in the case. Let me give you a little  
6 something about -- and I've done a few of these trials. Let  
7 me tell you a little bit of something about the argument  
8 that Mr. Perkins is making.

9 I want to know where he stood up and argued  
10 the evidence to you about mitigation? Where? There wasn't  
11 one. Well, Mr. Perkins got up and said he's a child of God,  
12 and he is. He got up and said you are given grace, and I  
13 guess you are. And he asked you, what would Jesus do?  
14 Well, let me tell you -- let me address these as tactfully  
15 as I can.

16 Under his argument, no one would ever get the  
17 death penalty. Never. Let me tell you why. If all it  
18 took, if the status of the law in the State of Texas were,  
19 if you were a child of God, that is mitigation, you could  
20 never get the death penalty, the law in the State of Texas  
21 would not include the death penalty. Because everyone that  
22 commits a crime is a child of God.

23 That's not what the law says. The law says,  
24 base your verdict on the evidence in the case. Because let  
25 me tell you something. Carolyn Click turned her cheek, and

1 she faced evil, and she paid for it.

2 Because I will tell you one thing, Ladies and  
3 Gentlemen. When you go down there and you talk about Tracy  
4 Beatty, let me tell you what I'm not going to do. I'm not  
5 going to have a guard or his daughter come up here and ask  
6 me what he's doing back in the pen for 40 years. I'm not  
7 going to have a guard or his daughter come ask me where her  
8 daddy's at.

9 Because I'll tell you something. He's a cold  
10 killer. And when he put his hands around Carolyn Click's  
11 neck, he didn't think one time about being a child of God.  
12 That's not mitigation based on the evidence.

13 Let me tell you something. What Mr. Perkins  
14 is getting up here and doing is saying everybody is a child  
15 of God; therefore, don't assess the death penalty. His  
16 argument is contrary to the state of the law in the State of  
17 Texas.

18 You know, Ladies and Gentlemen, for the next  
19 40 years, that's why you have that special issue. Because  
20 if he goes down there for the next 40 years, what do you  
21 think he's going to do? He's going to terrorize, he's going  
22 to hurt, and he's going to victimize. That's why you have  
23 the special issue.

24 You want me to tell you-all what you need to  
25 look at? Look at all the evidence. Look at what he's done.

1 If you will hurt an 18-month-old baby and your own mom,  
2 you'll hurt anybody. You look at the way that's sticking  
3 out of that box. He's awaiting a capital murder trial in  
4 the Smith County Jail, and he makes that right there  
5 (indicating) sticking out of that box.

6 Because I'll tell you this: He is a future  
7 danger, he's a killer, and he's gonna continue to be that.  
8 You know, Mr. Perkins talks about he's not a hundred percent  
9 evil; he's not a hundred percent worthless.

10 I'll tell you, for 20 years, he's hurt  
11 people. I want to know when the rights of people not to be  
12 victimized -- when do the rights of people not to be hurt by  
13 Tracy Beatty become paramount to his rights? When do we  
14 finally say, "Enough, Tracy Beatty; we have tried everything  
15 with you; we have put you in jail; we have put you in the  
16 pen; we have put you on probation; we have put you on  
17 parole"? You know, his conduct never changes. Never.

18 And then Mr. Perkins tries another argument.  
19 Mr. Perkins tries this argument: "Oh, I'm bad, and I'm  
20 dumb. I missed it." He didn't miss anything. Let me  
21 explain something to you, just to address these things  
22 because you never know what you're going to go back there  
23 and talk about.

24 4:00 o'clock -- and I'm not going to spend  
25 much time on it because I don't want to get off on a rabbit

1 trail. 4:00 o'clock, she comes over and talks to Betty  
2 McCarty, the victim does.

3 5:30 -- 5:00 to 5:30, he's in Malakoff.  
4 Stacey Killough tells you it takes 30, 45 minutes to get  
5 there.

6 6:30, he's back at Lieanna Wilkerson's house.  
7 And what does she tell you here? "He only stays at my house  
8 a few minutes. I'm trying to get my kids ready to go to  
9 Killeen." You didn't miss anything. That's exactly what  
10 the evidence shows. But what he's trying to get you to do  
11 is say, "Oh, God, it couldn't -- what if we missed  
12 something? That's mitigation."

13 That's not mitigation. Understand something,  
14 mitigation is based on not what ifs or what could have been.  
15 You heard the evidence, you deliberated, and you found --  
16 and you made the right decision.

17 Let me show you something else. I'm just  
18 going to hold it up as I read it so everybody can finally  
19 put this to rest. "Her words to me that afternoon is, 'I  
20 told Tracy to leave today.'"

21 "Now, Ms. McCarty, I know that it's hard to  
22 remember exactly what was said, but isn't it true that  
23 before lunch, you said that she asked him to leave? Didn't  
24 you say that?"

25 "I might have used that phrase, but I



1 remember what I've been telling all along is she told him to  
2 leave that day."

3 Look, Mr. Perkins doesn't have any  
4 mitigation. He knows there's not any based on the evidence.  
5 What did you hear in the evidence? You don't go back there  
6 as a jury and say, "Well, I'm just going to give him a life  
7 sentence. I'm going to answer the special issues in such a  
8 way that he gets a life sentence just on the off chance  
9 maybe I heard something wrong." That's contrary to the law.

10 Or "I'm going to go back there and give him a  
11 life sentence because he is a child of God." Every criminal  
12 defendant is. Understand, I'm not trying to lessen that or  
13 be disrespectful, but that's not the evidence in the case.

14 If you really were going to do what  
15 Mr. Perkins was going to ask you to do, you really would  
16 have not been fit to sit on this jury, because every  
17 criminal defendant would always get a life sentence. And  
18 I'll tell you something. I'm not going to shed a tear for  
19 that defendant, but I'm going to reflect on what he's done,  
20 what he's chosen to do, and what he will do.

21 And I'll tell you this: Do any of y'all  
22 really believe that we haven't proven that probably Tracy  
23 Beatty will continue to commit criminal acts of violence  
24 that will constitute a continuing threat to society? Is  
25 there anyone who really believes that the evidence doesn't

1 show that here? Really?

2 Is there anyone that really thinks that  
3 there's any mitigation in Tracy Beatty's life sufficient to  
4 warrant life over death? Really?

5 Because you understand something. Tracy  
6 Beatty did what he did. He didn't have to take that little  
7 18-month-old and do what he did to her, and he didn't have  
8 to kill his mother, and he didn't have to use dope all those  
9 years, and he didn't have to beat her up and get his parole  
10 revoked and come back out when she gave him a second chance  
11 and kill her.

12 You see, he didn't have to do all of that and  
13 then somehow want to make you feel guilty for something.  
14 What do you have to feel guilty for? Your job as jurors in  
15 this case is serious. You know why it's serious? Because  
16 he's gonna -- Tracy Beatty is gonna encounter a guard in  
17 TDC, and for the next 40 years, knowing that he doesn't look  
18 at parole until he's 82, what do you think he's going to go  
19 down there and do? What do you think he's going to go down  
20 there and do?

21 So instead of reflecting on Tracy Beatty, why  
22 don't you -- why don't you focus on his past victims and the  
23 future victims to come. And why don't you say to him  
24 enough. Enough. Because I'll tell you something. I'm not  
25 gonna have a mother or daughter come to me and ask me about

1 their father who was a guard because I know what he's gonna  
2 to do. He made that shank just a month or so ago, just a  
3 month or so ago.

4 Mr. Perkins' arguments are arguments when  
5 they don't have any -- when they want to get you off on the  
6 fact that they have no evidence in mitigation. None. There  
7 is no mitigation in this case, much less any sufficient to  
8 warrant life over death. So they make the argument to you,  
9 well, he's a child of God.

10 The death penalty is not contrary to the law  
11 of God. And your duty, the oath you took before God, was to  
12 base your verdict on the evidence. And if you based your  
13 verdict on giving a life sentence because he's a child of  
14 God, then no one on this jury would be fit to serve as a  
15 jury in a criminal case in the State of Texas because every  
16 defendant would automatically get a life sentence. It's  
17 just that simple.

18 And I'll tell you this: This argument that  
19 Mr. Perkins makes, "Well, you know, I missed some things,"  
20 he didn't miss anything. Mr. Perkins is a brilliant lawyer.  
21 He's smart enough to get up and try to put some doubt in  
22 your mind over in the guilt/innocence evidence as if to say,  
23 "Now, if you have anything, just call it a wash and give him  
24 a life sentence."

25 The fact that you deliberated your verdict is

1 not evidence. You did what you were supposed to do as  
2 jurors. You don't convict beyond all doubt. You must  
3 believe the defendant is guilty beyond a reasonable doubt.

4 Understand something. The law recognizes  
5 that you can and will have some doubt. That's why we don't  
6 have to prove it to you beyond all doubt. If that doubt is  
7 considered as mitigation, then a defendant could never get  
8 the death penalty.

9 You see how that works? We don't have to  
10 prove it to you beyond all doubt, and the fact you have  
11 doubt is not evidence. That's deliberation. And if that  
12 was the standard, as Mr. Perkins has detailed to you, we  
13 could never get the death penalty on a defendant in the  
14 State of Texas ever.

15 Understand, this is serious, and it is.  
16 Mr. Perkins talks about we're trying to kill the defendant.  
17 You know what? I didn't electrocute an 18-month-old baby; I  
18 didn't kill my mother; I didn't use dope and neither did  
19 you. He did. And he should be held accountable for that.

20 And when he goes down to the system that's  
21 been unable to change his conduct for 20 years, for 20  
22 years, and that guard that's down there is going down there  
23 to make a living to support his family, pulls him out of  
24 there and that happens to him, that's why you look at future  
25 danger, and you say no more. No more.

1                   Let me ask you this: What more could he do  
2 that you haven't heard? What more could the State have  
3 brought you in this case than you heard? What more? Been  
4 on parole, been on probation, been to the pen, been to jail,  
5 and while he's awaiting charges, he makes a shank.

6                   He kills his own mother. He electrocutes an  
7 18-month-old, who gets to go to the closet and cuddle up as  
8 she bleeds. And a guard that walks up to him and says, "Get  
9 a haircut," just like that (snaps fingers).

10                  And then Mr. Perkins comes in and makes  
11 arguments he knows are contrary to the law. Well, I'll tell  
12 you this: When you go back and you give him a life sentence  
13 because he's a child of God, I'm not explaining it, because  
14 that's not the law. And if that was the standard that the  
15 law had, no one would ever get it. And it's not the law,  
16 and Mr. Perkins knows it.

17                  You know, Ladies and Gentlemen, you've heard  
18 the evidence, and you're going to do what you're going to do  
19 in this case, but you have something that is so important to  
20 you in your deliberation. You have the past, which is the  
21 best predictor of the future, and you have something only a  
22 month ago.

23                  Because you look at those -- you look out  
24 at -- you look at these guards sitting out here, and you  
25 think about those young guards down there working in TDC.

1 Some of them -- some of them are not honest people. Many of  
2 them are as hard-working, family-oriented, and caring as  
3 you'll ever find, down there doing a job that I can't even  
4 imagine.

5 And I'll tell you something. They're  
6 entitled to protection. If you believe the evidence shows  
7 that there is a probability, that he will probably continue  
8 to commit criminal acts of violence that will constitute a  
9 continuing threat to society, you took an oath to answer  
10 yes. And if you don't find there's sufficient mitigation to  
11 warrant a life sentence over death, which there's clearly  
12 not, you took an oath to answer no.

13 Understand something. I'm not killing the  
14 defendant. You, by your verdict, if it was yes or no, are  
15 not killing him. You're answering special issues based on  
16 the evidence. It just -- it amazes me that he will do the  
17 things he's done, hurt the people he's hurt, and then come  
18 in here and say do some kind of -- "Oh, well, yeah, but you  
19 know what? It's your fault. It's your fault. It's your  
20 fault. You're trying to kill me. It's your fault."

21 Where were the --

22 MR. PERKINS: Judge, can we approach the  
23 bench?

24 (At the bench, on the record.)

25 MR. PERKINS: Judge, I'm going to object to

1 the last comment as a direct comment on the defendant's  
2 failure to testify in either phase of the trial.

3 The prosecutor said that the defendant --  
4 "It's amazing the defendant did this, did this, and then  
5 would come in here and say" is a direct comment on his  
6 failure to testify. I would ask for an instruction to the  
7 jury to disregard in its entirety the last comment made by  
8 the prosecutor in his argument.

9 MR. BINGHAM: Judge, this is in direct  
10 response to the Defense's closing argument. It's not a  
11 comment on the defendant's right not to testify. I, in no  
12 way, made a comment on his right to testify. It's in direct  
13 response to his argument.

14 MR. PERKINS: He said -- he made a specific  
15 reference to the defendant. He said that the defendant  
16 would do the things that he did and then come in here and  
17 say -- I'm telling you, Judge. That's exactly what he said.

18 MR. BINGHAM: I was referring to the  
19 Defense's argument, Judge.

20 THE COURT: The Court considers it a response  
21 to the argument made by defense counsel, and the Court's  
22 going to overrule the objection.

23 (End of bench conference.)

24 MR. BINGHAM: And let me clear up something.  
25 The evidence in this case has proved -- has shown no

1 mitigation. Go back there and look at what it says. It  
2 says, taking into consideration -- because that's the gist  
3 of the Defense's argument. They made no argument that he  
4 was not a future danger. He is. They came up and said,  
5 well, he's a child of God; that is mitigation. Grace;  
6 that's mitigation.

7 Let me show you something. Taking into  
8 consideration all of the evidence, all of the evidence,  
9 including the circumstances of the offense, the defendant's  
10 character and background, and the personal moral culpability  
11 of the defendant. See what the law is asking you to do?  
12 Base your verdict on the evidence in the case.

13 Every defendant is a child of God. The  
14 State's entitled to a fair trial, and it's entitled to a  
15 jury that renders their verdict based on the evidence and  
16 the oath you took as jurors. We know it's a hard job you've  
17 got. It is. You didn't ask for it, and we know that.

18 But understand something. You didn't do the  
19 things that brought us here today. He did. He's a  
20 cold-blooded killer. He doesn't think twice about his  
21 victims. He doesn't. He took that 18-month-old baby --  
22 don't you know she cried when he stuck that to her belly?  
23 She was so scared, as a year-and-a-half-old, that she  
24 crawled in that closet and cuddled up and bleed (sic).

25 What do you feel for him? He put his hands



1 around his mother's neck, and he looked her in the eye, and  
2 he killed her. And when he goes down to the pen, if you  
3 give him a life sentence, he's going to hurt somebody else  
4 because that's what he does. He feels no remorse for what  
5 he does. He doesn't think the rules apply to him. He's a  
6 killer.

7 Ladies and Gentlemen, you've got to base your  
8 verdict on the evidence in the case, just like the special  
9 issues say. You -- I'm not going to go back through the  
10 evidence. You go back there and remember and you think  
11 about the arguments in this case. It's based on the  
12 evidence in the case.

13 We know it's -- we know your job is serious.  
14 I submit that your job is difficult in that the decisions  
15 you make are serious. But on the evidence you must  
16 consider, your decision should be pretty clear in this case.

17 I want to tell you, Mr. Perkins said, "Switch  
18 sides of the table with me." Well, you know something? I'm  
19 sitting on the prosecution side of the table. I'm the  
20 elected district attorney in this county. And I know who  
21 killed, and I know who was killed.

22 And if you want a tremendous responsibility  
23 in a case, as Mr. Perkins says, it's sitting next to this  
24 defendant. I disagree. What is the tremendous  
25 responsibility is to make jurors understand it's not whether

1 you're a child of God. It's to base it on the evidence.

2 And if you want a tremendous responsibility,  
3 talk to the family of Carolyn Click, who didn't kill anyone.  
4 And if you want a tremendous responsibility, go back to your  
5 office up on the fourth floor and sit in the chair and worry  
6 about those guards who are going to have to encounter this  
7 defendant over the next 40 years.

8 You base your verdict, Ladies and Gentlemen,  
9 on the evidence. Mr. Perkins told you he's brutal, and he's  
10 vicious, and he's a career criminal, and he doesn't respect  
11 life. The Defense's own words ought to answer that first  
12 special issue for you.

13 And then they give you the arguments to get  
14 you off point that aren't the evidence in the case, because  
15 there is no mitigation sufficient to warrant life over  
16 death. What mitigation could there be when you read the  
17 special issue?

18 And when you go back to answer it, read it.  
19 Taking into consideration all of the evidence. What  
20 evidence did you hear? Not argument of counsel, not child  
21 of God, not grace. But what evidence did you hear from that  
22 witness stand right there that was mitigating and reduced  
23 the blameworthiness of this defendant sufficient to warrant  
24 life over death? What? That's what the law says.

25 And I know this is emotional for y'all. I

1 look out there, and I see the Kleenexes. And you know what  
2 I hope, though? I hope -- and I don't know why there's -- I  
3 don't specifically what's in your minds. But I hope that  
4 when you go back there, that you feel as heart felt for the  
5 victims of Tracy Beatty as you do for Tracy Beatty, if you  
6 do for him at all.

7 And I hope when you go back there and you  
8 deliberate this case, that you look forward, that you look  
9 at what he's done in the past, that you look at what he's  
10 done in the past, and you look forward to the future in  
11 determining whether he's a future danger.

12 Because somebody's life may depend on it.  
13 Because I'll tell you something. There's no rolling back  
14 time. When Tracy Beatty goes down to the pen and he hurts  
15 somebody, and he's gonna, you know, we don't get to come  
16 back in here and rewind what we've done. This is it right  
17 now.

18 So base your verdict on the evidence. And  
19 you remember something. He made his choices, and he did it.  
20 What you're doing back there is following the law and  
21 answering the special issues based on the law. Don't make  
22 any apologies for him. Don't feel any guilt for what he  
23 did. You understand that you're following the law in the  
24 case and basing your verdict on the evidence.

25 Ladies and Gentlemen, I'm gonna sit down.

1 And I know you're tired, and I know you've heard the  
2 evidence. I will submit to you that this case cries for the  
3 death penalty, and it does to this extent: That the  
4 evidence clearly shows beyond a reasonable doubt that he  
5 would probably continue to commit criminal acts of violence  
6 that would constitute a continuing threat to society.

7 My God, you just have to look to what he's  
8 done in the past, what he did only a month or so ago, what  
9 the doctors told you. And as you look at the evidence,  
10 after you've answered that one yes, and you go down to the  
11 mitigation, you ask yourself, based on the evidence, what  
12 did you hear that was sufficient to warrant life over death?  
13 What did you hear from the witness stand? That's what you  
14 base your verdict on in this case.

15 Thank y'all very much.

16 THE COURT: Thank you, Mr. Bingham.

17 Ladies and Gentlemen, you will now retire to  
18 the jury room to consider your verdict in the case, the  
19 charge of Court, as you well know, will come in with you.  
20 If you do need additional copies of the charge of the Court,  
21 if you'll notify the bailiff, he'll advise the Court, and  
22 I'll have additional copies delivered in to you.

23 You will retire now for your deliberations.

24 All rise for the jury.

25 (The jury leaves the courtroom.)

1 (Open court, defendant present, no jury.)

2 THE COURT: All right. We'll be in recess  
3 waiting for the jury.

4 (Jury deliberations.)

5 (The jury enters the courtroom.)

6 (Open court, defendant and jury present.)

7 THE COURT: Be seated, please. Thank you.

8 On the record in Cause Number 241-0978-04,  
9 the State of Texas versus Tracy Beatty. The record should  
10 reflect that State's counsel is present; the defense counsel  
11 is present; the defendant is present; and the members of the  
12 jury are present and seated in the courtroom.

13 Mr. Harris, I received a note from you that  
14 the jury had reached a verdict in this case; is that  
15 correct?

16 THE PRESIDING JUROR: Yes, Your Honor.

17 THE COURT: Mr. Foreman, have you completed  
18 the certificate, which is at the very end of the charge, the  
19 last page in the charge?

20 THE PRESIDING JUROR: Yes, Your Honor.

21 THE COURT: All right, sir. Would you hand  
22 the verdict, please, to the bailiff for delivery to the  
23 Court?

24 (The verdict is handed to the bailiff.)

25 THE COURT: All right. If the defendant

1 would rise at this time.

2 THE DEFENDANT: (Complies.)

3 THE COURT: In Cause Number 241-0978-04, the  
4 State of Texas versus Tracy Beatty, the Court has received  
5 the following answers to the special issues contained in the  
6 verdict form provided to the jury at the beginning of  
7 deliberations.

8 "Special Issue Number 1: Is there a  
9 probability that the defendant, Tracy Beatty, would commit  
10 criminal acts of violence that would constitute a continuing  
11 threat to society?"

12 Answer to Special Issue Number 1: "We, the  
13 jury, unanimously find and determine beyond a reasonable  
14 doubt that the answer to this Special Issue Number 1 is  
15 'yes,'" signed Mitchell Harris, Foreman.

16 "Special Issue Number 2: Taking into  
17 consideration all of the evidence, including the  
18 circumstances of the offense, the defendant's character and  
19 background, and the personal, moral culpability of the  
20 defendant, is there sufficient mitigating circumstance or  
21 circumstances to warrant that a sentence of life  
22 imprisonment rather than a death sentence be imposed?"

23 Answer to Special Issue Number 2: "We, the  
24 jury, unanimously find and determine that the answer to this  
25 Special Issue Number 2 is 'no,'" signed by the Foreman of

1 the Jury, Mitchell Harris.

2 Jury certificate: "We, the jury, return in  
3 open court the above answer or answers as our answer or  
4 answers to the special issue or special issues submitted to  
5 us and the same is our verdict in this case," signed by  
6 Mitchell Harris, Foreman of the Jury.

7 Let me ask the jury and each member of the  
8 jury at this time, if the verdict that the Court just read  
9 and the answers to the special issues contained in the  
10 verdict form that the Court just read is your verdict, would  
11 you so signify by raising your right hand?

12 (The jury complies.)

13 THE COURT: The record should reflect that  
14 all 12 members of the jury have raised their right hand.  
15 Thank you.

16 Is there any request from the State,  
17 Mr. Bingham, to have the jury individually polled?

18 MR. BINGHAM: There's not.

19 THE COURT: Is there any request from the  
20 Defense, Mr. Perkins, to have the jury individually polled?

21 MR. PERKINS: No, Your Honor.

22 THE COURT: The Court, then, does, having  
23 reviewed the verdict form as returned to the Court by the  
24 jury, the Court does accept the verdict, has received the  
25 verdict, and will order it filed among the papers of the

1 cause with the clerk of the Court to note the time it was  
2 received by the Court upon the verdict form.

3 Mr. Bingham, on behalf of the State, is there  
4 any legal reason that you know why the Court should not now  
5 at this time discharge the jury?

6 MR. BINGHAM: I don't know of any, Judge.

7 THE COURT: Mr. Perkins, any legal reason,  
8 then, that you would have to offer as to why at this time  
9 the jury should not be discharged?

10 MR. PERKINS: Without waiving any previous  
11 objections that the Defense made to the sentencing  
12 procedures, sentencing scheme, or any other objection that  
13 we have to evidence, there's no additional legal reason at  
14 bar, Your Honor.

15 THE COURT: Thank you, Mr. Perkins.

16 Ladies and Gentlemen of the Jury, upon  
17 receiving your verdict, which has been read by the Court and  
18 which you have all signified by raising your right hand that  
19 it is the individual verdict of each one of you, 12 jurors,  
20 the Court will now be able to discharge you from jury  
21 service in this case and release you from all of the  
22 instructions previously given to you by the Court. That is,  
23 that you are you free to talk about this case now to anyone  
24 that you wish to discuss it with.

25 At the same time, you do not have to discuss



1 this case with any individual. Occasionally, after jury  
2 service, you may be asked to give an affidavit regarding  
3 your jury service. You are free to give the affidavit; you  
4 are free to decline to give any affidavit. In other words,  
5 you can talk to whoever you want to about this case, or you  
6 don't have to talk to anyone about this case. That's a  
7 personal, private decision that you are entitled to make and  
8 that each one of you will make yourselves.

9           You will make the decision as to whether or  
10 not you want to discuss the case with anyone as to whether  
11 or not you want to give an affidavit if you're asked to do  
12 so. You can discuss the case with anyone you want to, or  
13 you can decline to discuss the case with anyone that you do  
14 not want to talk to about it. That is each one of your  
15 individual decisions to make.

16           The Court wants to thank you for all of the  
17 time that you have invested in this case. The Court is well  
18 aware that, certainly, this type case where it is a capital  
19 murder case and where the State is seeking the death penalty  
20 is a case where, although all jury service is jury duty,  
21 certainly when you serve on this type case, going through  
22 the individual voir dire examination and then going through  
23 the trial itself, including the special issues which have to  
24 be answered in a case such as this, the Court is well aware  
25 that this is really jury service above and beyond the call

1 of duty, and it is jury duty.

2 And for those of us who have been in the  
3 criminal justice system for a long time and have chosen it  
4 as a profession in various capacities, we work in the system  
5 every day. Just about everyone involved in this case has  
6 been in the criminal justice system for a long time.

7 I think what is especially important and we  
8 remember and I would want to say to you is that it is  
9 individuals such as yourself who are chosen through the  
10 designed process to serve on a jury in this case, a capital  
11 murder jury, where the State was seeking the death penalty,  
12 that perform the most important function in our criminal  
13 justice system.

14 It goes without saying that the system would  
15 not work without your service. It's clear to this Court  
16 that you have all closely followed the Court's instructions,  
17 all followed the law as given to you in the Court's charge.  
18 You have been a very attentive jury. Where I am sitting  
19 here, it's been very clear to me that you have all paid very  
20 close attention to all of the testimony of the witnesses and  
21 the exhibits as they came in before you in this trial.

22 The Court certainly recognizes that this is  
23 difficult jury service that you have just performed. At the  
24 same time, our system, as it is designed to work, simply  
25 could not function without individuals such as you. And you

1 have the Court's deep appreciation for all the time that you  
2 have put in individually in this case. I'm very aware that  
3 you have all had to make sacrifices individually from a  
4 businesses standpoint or of a personal standpoint to be down  
5 through the evidence in this trial all the way down to the  
6 verdict that you've rendered and returned into court today.

7 So on behalf of the Court, and I know on  
8 behalf of the State and the Defense, you have our deep  
9 appreciation for the service that you have rendered in this  
10 case.

11 It has been said, and I think -- we often  
12 think in terms of military duty, and certainly at this time  
13 that our country is engaged around the world, certainly at  
14 this particular time with so many men and women so far away  
15 from home in conflict, I think it's extremely important and  
16 I know that you do and we all recognize and everyone  
17 recognize that one of the primary rights that those soldiers  
18 are fighting for is what just took place over the last two  
19 weeks of evidence coming in, a case tried in as careful and  
20 diligent a manner as it could be done, both the State and  
21 Defense represented by very able and capable, especially  
22 experienced, lawyers.

23 As a judge, we try to make the best rulings  
24 that we can based on what we believe the law to be. But in  
25 the final analysis, it is certainly your service that is,

1 basically, the cog in the wheel that makes the wheels of  
2 justice in our criminal justice system work.

3 And, again, I just want to express to you --  
4 I know the sequestration order also, I'm sure, caused some  
5 difficult and hardship. It's not one the Court likes to  
6 have to enter, but in a case such as this, it normally has  
7 to be done at some point.

8 Again, you have the Court's deep appreciation  
9 for your service. The Court is going to be able to excuse  
10 you at this time.

11 I will say to you that if you have in regard  
12 to your service, any suggestions, any complaints, any way  
13 you think that we could do a better job of accommodating you  
14 while you're here in jury duty during a trial, feel free to  
15 call me and let me know. Feel free to call my staff and let  
16 them know.

17 I certainly know that one of the most  
18 frustrating things to a jury is down through a lengthy  
19 trial, as this was, that many times you are out of the  
20 courtroom more than you would understand why you were out of  
21 the courtroom. In other words, that you're out of the  
22 courtroom probably it seems to you too many times.

23 And we're working in here in the courtroom.  
24 We're taking up matters outside of your presence that under  
25 the law have to be taken up outside of your presence. But

1 at the same time, I know that's frustrating. That's just  
2 part of the way our system works and part of what we have to  
3 go through to ensure a fair and impartial trial. Although I  
4 know it's frustrating to you, I hope you understand it's  
5 part of our process.

6 You have been a very patient jury. You have  
7 fulfilled, in the Court's assessment, the duty in this case  
8 to the highest standards that we can expect from jurors. So  
9 with that, the Court will, at this time, excuse you, release  
10 you from the instructions of the Court.

11 And let me say to you that what we're going  
12 to try to do is the deputies will go down with you, take you  
13 down to the grand jury room where you've been for a good  
14 period of time. I know that you have belongings here,  
15 personal belongings, like up in the van. I think that some  
16 of you may need to make telephone calls.

17 Carleton will be going back down with you, as  
18 well as other bailiffs, and you will be able to make  
19 whatever telephone calls you need to make, if someone is  
20 coming to pick you up. Once all of those arrangements are  
21 made and we are in a position to, then you will be able to  
22 go ahead and have someone pick you up and leave with them or  
23 deputies will escort you out to your vehicles, out to your  
24 cars, to leave.

25 There will be in the courtroom a formal

1 sentencing process that will take place. Certainly, any of  
2 you that want to, you can be present for that formal  
3 sentencing process, if you wish to wait and see that process  
4 take place. At the same time, we have made the arrangements  
5 where we can get you on down to the grand jury room where  
6 you can get everything done you personally need to get done,  
7 where you can be picked up or be escorted to your car just  
8 as soon as possible.

9 And as soon as -- we'll have it where you can  
10 go ahead and make the calls. And then as soon as we can get  
11 you on out to your cars and to be picked up, we will do  
12 that. If you will bear with us down there just a little bit  
13 longer as soon as we can, that will all be done.

14 So at this time, again, with the Court's deep  
15 appreciation, you may be excused down to the grand jury room  
16 where deputies will be with you until all the matters can be  
17 taken care of, and then you can leave in your cars with the  
18 bailiff escort or individuals that can be called to come on  
19 down and pick you up.

20 All rise for the jury.

21 (The jury leaves the courtroom.)

22 (Open court, defendant present, no jury.)

23 MR. BINGHAM: May I approach?

24 (At the bench, on the record.)

25 MR. BINGHAM: I was asking about him talking

1 about their jury service. He actually said that.

2 (End of bench conference.)

3 THE COURT: Ladies and Gentlemen, thank you  
4 very much.

5 You can be excused at this time.

6 MR. BINGHAM: I apologize, Judge. I missed  
7 that.

8 THE COURT: Be seated.

9 That's okay.

10 All right. At this time, we will proceed  
11 with the formal pronouncement of sentence. If the defendant  
12 will stand.

13 THE DEFENDANT: (Complies.)

14 THE COURT: On behalf of the State, is there  
15 anything you have to present before the Court formally  
16 pronounces the sentence, Mr. Bingham?

17 MR. BINGHAM: Your Honor, we do not.

18 THE COURT: On behalf of the defendant,  
19 Mr. Perkins, is there any legal reason you wish to offer at  
20 bar as to why the sentence should not now formally be  
21 pronounced?

22 MR. HAWK: Yes, Judge. On behalf of the  
23 defendant, we would renew all of the objections that we made  
24 to the capital sentencing scheme and renew our request of  
25 the Court to set side the capital sentence and verdict as

1 well as all the motions we filed.

2 We ask and reurge at this time for the Judge  
3 to void the verdict of the jury and prevent the imposition  
4 of the death penalty for the reasons enumerated in those  
5 motions. We wish to preserve each error and ask the Court  
6 at this time to rule on each of the requests made prior to  
7 this time before the sentencing.

8 THE COURT: In regard to the sentencing  
9 scheme?

10 MR. HAWK: All of the motions we've made with  
11 regard to the capital sentencing scheme?

12 THE COURT: Which the Court has previously  
13 ruled on?

14 MR. HAWK: You have.

15 THE COURT: The Court's rulings on all of  
16 those motions regarding the capital sentencing scheme that  
17 the Court has earlier denied are denied again.

18 MR. HAWK: Thank you, Judge.

19 THE COURT: Therefore, at this time, the  
20 Court, finding no legal reason at bar, Mr. Beatty, pursuant  
21 to the jury's verdict in this case finding you guilty of the  
22 offense of capital murder, as alleged by the State in its  
23 indictment, and the jury having found you guilty of the  
24 offense of capital murder and pursuant to the jury's  
25 verdict, answering the special issues in this cause, Special



1 Issue Number 1 where the jury found that unanimously beyond  
2 a reasonable doubt that the answer to Special Issue Number 1  
3 is "yes," and the jury having answered Special Issue  
4 Number 2 unanimously, and the jury having found that the  
5 answer to Special Issue Number 2 unanimously was "no," and  
6 is "no," based upon those answers to the special issues  
7 submitted to the jury and the jury's earlier verdict finding  
8 you guilty of the offense of capital murder, pursuant to the  
9 provisions of Texas law, the Constitution of Texas and of  
10 the United States, and the Court having accepted these  
11 verdicts of the jury and have them filed among the papers of  
12 the cause, the Court, at this time, does sentence you,  
13 pursuant to law, to death by lethal injection.

14 In connection with this sentence of death,  
15 there is a mandatory appeal direct to the Texas Court of  
16 Criminal Appeals, the Court of Criminal Appeals of the State  
17 of Texas.

18 The Court, in connection with the sentencing,  
19 does not at this time set an execution date. Texas law  
20 requires that although the sentence of death has now been  
21 pronounced by the Court that you do have an automatic  
22 mandatory appeal. That automatic mandatory appeal will take  
23 place. The transcript records and all of those documents  
24 will be prepared, the court reporter's record, the clerk's  
25 record, and briefs filed.

1           The Texas Court of Criminal Appeals will then  
2 hear the case and issue their decision. If they issue a  
3 mandate back to this Court affirming the judgment and  
4 sentence of the Court, then this Court would, pursuant to  
5 Texas law, proceed with setting a date of execution.

6           There's also a separate appellate procedure;  
7 that is an 11.071 writ of habeas corpus procedure. It is a  
8 collateral appeal that is provided for by Texas law,  
9 mandated by Texas law, to be provided you and sanctioned --  
10 has been sanctioned by the Federal courts.

11           If you are too poor or too indigent to hire a  
12 lawyer to represent you in connection with the direct appeal  
13 and in connection with the 11.071 writ of habeas corpus  
14 appeal, this Court will, at your request, appoint counsel to  
15 represent you in those proceedings.

16           Are you requesting counsel in that regard,  
17 Mr. Beatty?

18           MR. HAWK: Just one moment. We're having a  
19 conference.

20           THE COURT: Mr. Hawk, perhaps -- I'm sorry.  
21 The Court -- well, go ahead, Mr. Hawk. I'll hear what you  
22 have to say.

23           MR. HAWK: Because there are two parallel  
24 appellate mechanisms at this time, Mr. Beatty does not  
25 immediately request counsel on his 11.071 writ, but we will

1 address with the Court and would ask the Court at the  
2 conclusion of this proceeding to entertain a matter for  
3 Mr. Perkins and myself regarding his direct appeal.

4 THE COURT: In that matter, what the Court  
5 would do, Mr. Hawk and Mr. Perkins, is simply require you to  
6 continue to serve in your capacity as counsel for the  
7 defendant to inform him fully about the appellate processes  
8 and appellate rights. And then if there's going to be an  
9 application for court-appointed counsel, then I -- the Court  
10 would request that you get the necessary affidavit of  
11 indigency filed.

12 And the Court would then make an appointment  
13 of counsel off the affidavit of indigency, so I'm,  
14 basically, just going to continue your representation, if  
15 not further, but certainly at this point through advising  
16 him of his appellate rights and the procedures involved in  
17 the appellate rights and to assist the Court in terms of if  
18 there's going to be a filing of an indigency affidavit so  
19 that the Court can appoint other counsel, if there's going  
20 to be other counsel.

21 MR. HAWK: Just one moment, Judge.

22 THE COURT: Mr. Hawk, I'm talking in terms of  
23 the direct appeal.

24 MR. HAWK: Right. And, Judge, here's what I  
25 suspect we're going to do. Because of the matters raised

1 and motions for new trial, if there is one filed, may bear  
2 not only on the the merits of the case in chief and all the  
3 matters that occurred during the course of trial, but may  
4 also directly reflect upon the performance of counsel who's  
5 appointed at trial.

6 We are anticipating to be filing a motion  
7 with the Court to withdraw from the cause so that counsel  
8 can be appointed for Mr. Beatty on his direct appeal to be  
9 in a position with sufficient time to file a motion for new  
10 trial and has an adequate opportunity to address issues  
11 associated with effective representation.

12 MR. PERKINS: In the meanwhile, Judge,  
13 obviously we have no objection to continuing our duty to  
14 advise him as to his appellate rights and the timelines  
15 associated therein.

16 THE COURT: Thank you, Mr. Perkins.

17 Then if the -- Mr. Perkins and Mr. Hawk, I  
18 will continue you in the capacity of representing the  
19 defendant for the purpose of what the Court has outlined  
20 here subsequent to the assessment and pronouncement of  
21 sentence.

22 Once the Court has received a mandate  
23 affirming the judgment and sentence of the Court and an  
24 order that denies the application from writ of habeas corpus  
25 from the Texas Court of Criminal Appeals, if the Court

1 receives both the mandates, then at that time, pursuant to  
2 Texas law, Mr. Beatty, you would be returned back to this  
3 Court, and at that time, the Court would set a date of  
4 execution pursuant to the statutes and the law of the State  
5 of Texas.

6                   You've been represented by Mr. Perkins and  
7 Mr. Hawk, your attorneys. Do you have any problems or any  
8 complaints whatsoever with the representation that Mr. Hawk  
9 and Mr. Perkins have provided you in this case?

10                   THE DEFENDANT: No.

11                   THE COURT: Sir?

12                   THE DEFENDANT: No, sir.

13                   THE COURT: The Court, then, does formally  
14 pronounce the sentence. The jury having found you guilty of  
15 capital murder and based on the jury's answers to Special  
16 Issue Number 1 and Special Issue Number 2 submitted to the  
17 jury in this case, the Court does pronounce the sentence as  
18 death by lethal injection.

19                   You may be seated at this time.

20                   THE DEFENDANT: (Complies.)

21                   THE COURT: Mr. Bingham, we're going to  
22 proceed at this time pursuant to Texas Constitution,  
23 victim's rights legislation, to take up any victim-impact  
24 testimony.

25                   MR. BINGHAM: Yes, sir.

1 THE COURT: Victim's statement.

2 MR. BINGHAM: Yes, sir.

3 THE COURT: Which, as you know, is not  
4 recorded on the record, but any statements that victims wish  
5 to make.

6 MR. BINGHAM: Judge, we do have three of the  
7 victim's family members that wish to give statements. We  
8 have informed them of the protocol, which that is done, and  
9 would only inquire of the Court whether the Court wants to  
10 take the witness stand or where they are is their choice.

11 THE COURT: I believe they can come around,  
12 Mr. Bingham, to the witness stand.

13 (Victim-impact statements.)

14 MR. BINGHAM: Judge, that concludes the  
15 victim-impact testimony.

16 THE COURT: Back on the record in Cause  
17 241-0978-04, the State of Texas versus Tracy Beatty, the  
18 State being present; defense counsel present; the defendant  
19 is present.

20 Is there anything further, Mr. Bingham, on  
21 behalf of the State?

22 MR. BINGHAM: No, Your Honor.

23 THE COURT: Is there anything further,  
24 Mr. Perkins, on behalf of the Defense?

25 MR. PERKINS: Not at this time, Your Honor.

1                   THE COURT: Then the Court -- Mr. Beatty, you  
2 will be remanded in the custody of the Smith County  
3 Sheriff's Department until such time as you can be  
4 transported to the Texas Department of  
5 Corrections-Institutional Division for the sentence of the  
6 Court to be carried out.

7                   We'll be in recess.

8                   (End of proceedings.)  
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1 STATE OF TEXAS \*


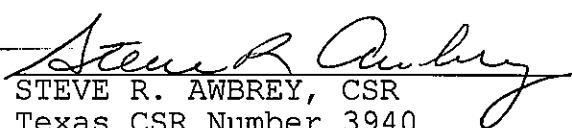
2 COUNTY OF SMITH \*

3 We, STEVE R. AWBREY, CSR, Official Court Reporter, and  
 4 KIM CHRISTOPHER, CSR, RPR, Deputy Official Court Reporter,  
 5 for the 241st Judicial District Court in Smith County,  
 6 Texas, do hereby certify that the above and foregoing  
 7 contains a true and correct transcription of all of the  
 8 proceedings in the foregoing styled and numbered cause, all  
 9 of which occurred in open court or in chambers and were  
 10 reported by us.

11 We further certify that this transcription of the  
 12 record of the proceedings truly and correctly reflects the  
 13 exhibits, if any, offered by the respective parties.

14 Witness our hand this the 19 day of

15 May, 2005.  
 16  
 17

18		
19	KIM CHRISTOPHER, CSR, RPR	STEVE R. AWBREY, CSR
20	Texas CSR Number 4219	Texas CSR Number 3940
21	Expiration date: 12-31-06	Expiration date: 12-31-05
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